

AN ACT

relating to furthering competition in the communications industry.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 33.001, Utilities Code, is amended to read as follows:

Sec. 33.001. MUNICIPAL JURISDICTION. (a) To provide fair, just, and reasonable rates and adequate and efficient services, the governing body of a municipality has exclusive original jurisdiction over the rates, operations, and services of an electric utility in areas in the municipality, subject to the limitations imposed by this title.

(b) Notwithstanding Subsection (a), the governing body of a municipality shall not have jurisdiction over the BPL system, BPL services, telecommunications using BPL services, or the rates, operations, or services of the electric utility or transmission and distribution utility to the extent that such rates, operations, or services are related, wholly or partly, to the construction, maintenance, or operation of a BPL system used to provide BPL services to affiliated or unaffiliated entities.

SECTION 2. Subtitle B, Title 2, Utilities Code, is amended by adding Chapter 43 to read as follows:

1 CHAPTER 43. USE OF ELECTRIC DELIVERY SYSTEM FOR ACCESS TO BROADBAND  
2 AND OTHER ENHANCED SERVICES, INCLUDING COMMUNICATIONS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 43.001. LEGISLATIVE FINDINGS. (a) The legislature  
5 finds that broadband over power lines, also known as BPL, is an  
6 emerging technology platform that offers a means of providing  
7 broadband services to reach homes and businesses. BPL services can  
8 also be used to enhance existing electric delivery systems, which  
9 can result in improved service and reliability for electric  
10 customers.

11 (b) The legislature finds that access to quality, high speed  
12 broadband services is important to this state. BPL deployment in  
13 Texas has the potential to extend broadband service to customers  
14 where broadband access is currently not available and may provide  
15 an additional option for existing broadband consumers in Texas,  
16 resulting in a more competitive market for broadband services. The  
17 legislature further finds that BPL development in Texas is fully  
18 dependent upon the participation of electric utilities in this  
19 state that own and operate power lines and related facilities that  
20 are necessary for the construction of BPL systems and the provision  
21 of BPL services.

22 (c) Consistent with the goal of increasing options for  
23 telecommunications in this state, the legislature finds that it is  
24 in the public interest to encourage the deployment of BPL by  
25 permitting affiliates of the electric utility, or permitting  
26 unaffiliated entities, to own or operate all or a portion of such  
27 BPL systems. The purpose of this chapter is to provide the

1 appropriate framework to support the deployment of BPL.

2 (d) The legislature finds that an electric utility may  
3 choose to implement BPL under the procedures set forth in this  
4 chapter, but is not required to do so. The electric utility shall  
5 have the right to decide, in its sole discretion, whether to  
6 implement BPL and may not be penalized for deciding to implement or  
7 not to implement BPL.

8 Sec. 43.002. APPLICABILITY. (a) This chapter applies to  
9 an electric utility whether or not the electric utility is offering  
10 customer choice under Chapter 39.

11 (b) If there is a conflict between the specific provisions  
12 of this chapter and any other provisions of this title, the  
13 provisions of this chapter control.

14 (c) No provision of this title shall impose an obligation on  
15 an electric utility to implement BPL, to provide broadband  
16 services, or to allow others to install BPL facilities or use the  
17 electric utility's facilities for the provision of broadband  
18 services.

19 Sec. 43.003. DEFINITIONS. In this chapter:

20 (1) "BPL," "broadband over power lines," and "BPL  
21 services" mean the provision of broadband services over electric  
22 power lines and related facilities, whether above ground or in  
23 underground conduit.

24 (2) "BPL access" means the ability to access broadband  
25 services via a BPL operator or BPL Internet service provider.

26 (3) "BPL operator" means an entity that owns or  
27 operates a BPL system on the electric power lines and related

1 facilities of an electric utility.

2 (4) "BPL Internet service provider" and "BPL ISP" mean  
3 an entity that provides Internet services to others on a wholesale  
4 basis or to end-use customers on a retail basis.

5 (5) "BPL system" means the materials, equipment, and  
6 other facilities installed on electric utility property to  
7 facilitate the provision of BPL services.

8 (6) "BPL electric utility applications" means  
9 services and technologies that are used and useful and designed to  
10 improve the operational performance and service reliability of an  
11 electric utility including, but not limited to, automated meter  
12 reading, real time system monitoring and meter control, remote  
13 service control, outage detection and restoration, predictive  
14 maintenance and diagnostics, and monitoring and enhancement of  
15 power quality.

16 (7) "Electric delivery system" means the power lines  
17 and related transmission and distribution facilities used by an  
18 electric utility to deliver electric energy.

19 (8) "Electric utility" shall include an electric  
20 utility and a transmission and distribution utility as defined in  
21 Section 31.002(6) or (19).

22 [Sections 43.004-43.050 reserved for expansion]

23 SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

24 Sec. 43.051. AUTHORIZATION FOR BPL SYSTEM. An affiliate of  
25 an electric utility or a person unaffiliated with an electric  
26 utility may own, construct, maintain, and operate a BPL system and  
27 provide BPL services on an electric utility's electric delivery

1 system consistent with the requirements of this chapter. Nothing  
2 in this chapter shall prohibit an entity defined in Section  
3 11.003(9) from providing BPL service or owning and operating a BPL  
4 system. Nothing in this chapter shall prohibit an electric utility  
5 from providing construction or maintenance services to a BPL  
6 operator or BPL ISP provided that the costs of these services are  
7 properly accounted for between the electric utility and the BPL  
8 operator or BPL ISP.

9 Sec. 43.052. OWNERSHIP AND OPERATION OF BPL SYSTEM.

10 (a) An electric utility may elect to:

11 (1) allow an affiliate to own or operate a BPL system  
12 on the utility's electric delivery system;

13 (2) allow an unaffiliated entity to own or operate a  
14 BPL system on the electric utility's electric delivery system; or

15 (3) allow an affiliate or unaffiliated entity to  
16 provide Internet service over a BPL system.

17 (b) The BPL operator and the electric utility shall  
18 determine what BPL Internet service providers may have access to  
19 broadband capacity on the BPL system.

20 Sec. 43.053. FEES AND CHARGES. (a) An electric utility  
21 that allows an affiliate or an unaffiliated entity to own a BPL  
22 system on the electric utility's electric delivery system shall  
23 charge the owner of the BPL system for the use of the electric  
24 utility's electric delivery system.

25 (b) An electric utility may pay a BPL owner, a BPL operator,  
26 or a BPL ISP for the use of the BPL system required to operate BPL  
27 utility applications.

1        (c) If all or part of a BPL system is installed on poles or  
2 other structures of a telecommunications utility as that term is  
3 defined in Section 51.002, the owner of the BPL system shall be  
4 required to pay the telecommunications utility an annual fee  
5 consistent with the usual and customary charges for access to the  
6 space occupied by that portion of the BPL system so installed.

7        (d) Notwithstanding Subsections (a)-(c):

8            (1) an electric utility may not charge an affiliate  
9 under this section an amount less than the electric utility would  
10 charge an unaffiliated entity for the same item or class of items;

11            (2) an electric utility may not pay an affiliate under  
12 this section an amount more than the affiliate would charge an  
13 unaffiliated entity for the same item or class of items; and

14            (3) an electric utility or an affiliate of an electric  
15 utility may not discriminate against a retail electric provider  
16 that is not affiliated with the utility in the terms or availability  
17 of BPL services.

18        Sec. 43.054. NO ADDITIONAL EASEMENTS OR CONSIDERATION  
19 REQUIRED. Because BPL systems provide benefits to electric  
20 delivery systems, the installation of a BPL system on an electric  
21 delivery system shall not require the electric utility or the owner  
22 of the BPL system or an entity defined in Section 11.003(9) to  
23 obtain or expand easements or other rights-of-way for the BPL  
24 system or to give additional consideration as a result of the  
25 installation or the operation of a BPL system. For purposes of this  
26 section, installation of a BPL system shall be deemed to be  
27 consistent with installation of an electric delivery system.

1       Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED.

2       An electric utility that allows the installation and operation of a  
3       BPL system on its electric delivery system shall employ all  
4       reasonable measures to ensure that the operation of the BPL system  
5       does not interfere with or diminish the reliability of the  
6       utility's electric delivery system. Should a disruption in the  
7       provision of electric service occur, the electric utility shall be  
8       governed by the terms and conditions of the retail electric  
9       delivery service tariff. At all times, the provision of broadband  
10       services shall be secondary to the reliable provision of electric  
11       delivery services.

12       [Sections 43.056-43.100 reserved for expansion]

13       SUBCHAPTER C. IMPLEMENTATION OF BPL SYSTEM BY  
14       ELECTRIC UTILITY

15       Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) An  
16       electric utility, through an affiliate or through an unaffiliated  
17       entity, may elect to install and operate a BPL system on some or all  
18       of its electric delivery system in any part or all of its  
19       certificated service area.

20       (b) The installation, operation, and use of a BPL system and  
21       the provision of BPL services shall not be regulated by any state  
22       agency, a municipality, or local government other than as provided  
23       for in this chapter.

24       (c) The commission or a state or local government or a  
25       regulatory or quasi-governmental or a quasi-regulatory authority  
26       may not:

27       (1) require an electric utility, either through an

1 affiliate or an unaffiliated entity, to install a BPL system on its  
2 power lines or offer BPL services in all or any part of the electric  
3 utility's certificated service area;

4 (2) require an electric utility to allow others to  
5 install a BPL system on the utility's electric delivery system in  
6 any part or all of the electric utility's certificated service  
7 area; or

8 (3) prohibit an electric utility from having an  
9 affiliate or unaffiliated entity install a BPL system or offering  
10 BPL services in any part or all of the electric utility's  
11 certificated service area.

12 (d) If a municipality or local government is already  
13 collecting a charge or fee from the electric utility for the use of  
14 the public rights-of-way for the delivery of electricity to retail  
15 electric customers, the municipality or local government is  
16 prohibited from requiring a franchise or an amendment to a  
17 franchise or from requiring a charge, fee, or tax from any entity  
18 for use of the public rights-of-way for a BPL system.

19 (e) The state or a municipality may impose a charge on the  
20 provision of BPL services, but the charge may not be greater than  
21 the lowest charge that the state or municipality imposes on other  
22 providers of broadband services for use of the public rights-of-way  
23 in its respective jurisdiction.

24 Sec. 43.102. COST RECOVERY FOR DEPLOYMENT OF BPL AND  
25 UTILITY APPLICATIONS. (a) Where an electric utility permits the  
26 installation of a BPL system on its electric delivery system under  
27 Section 43.052(a), the electric utility's investment in that BPL



1 system to directly support the BPL electric utility applications  
2 and other BPL services consumed by the electric utility that are  
3 used and useful in providing electric utility service shall be  
4 eligible for inclusion in the electric utility's invested capital,  
5 and any fees or operating expenses that are reasonable and  
6 necessary shall be eligible for inclusion as operating expenses for  
7 purposes of any proceeding under Chapter 36. The invested capital  
8 and expenses described in this section must be allocated to the  
9 customer classes directly receiving the services.

10 (b) In any proceeding under Chapter 36, just and reasonable  
11 charges for the use of the electric utility's electric delivery  
12 system by a BPL owner or operator shall be limited to the usual and  
13 customary pole attachment charges paid to the electric utility for  
14 comparable space by cable television operators.

15 (c) The revenues of an affiliated BPL operator or an  
16 affiliated BPL ISP shall not be deemed the revenues of an electric  
17 utility for purposes of setting rates under Chapter 36.

18 [Sections 43.103-43.150 reserved for expansion]

19 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

20 Sec. 43.151. AFFILIATES OF ELECTRIC UTILITY. (a) Subject  
21 to the limitations of this chapter, an electric utility may have a  
22 full or partial ownership interest in a BPL operator or a BPL ISP.  
23 Whether a BPL operator or a BPL ISP is an affiliate of the electric  
24 utility shall be determined under Section 11.003(2) or Section  
25 11.006.

26 (b) Neither a BPL operator nor a BPL ISP shall be considered  
27 a "competitive affiliate" of an electric utility as that term is

1 defined in Section 39.157.

2 Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. BPL operators  
3 shall comply with all applicable federal laws, including those  
4 protecting licensed spectrum users from interference by BPL  
5 systems. The operator of a radio frequency device shall be required  
6 to cease operating the device upon notification by a Federal  
7 Communications Commission or Public Utilities Commission  
8 representative that the device is causing harmful interference.  
9 Operation shall not resume until the condition causing the harmful  
10 interference has been corrected.

11 SECTION 3. Section 52.155, Utilities Code, is amended by  
12 amending Subsection (a) and adding Subsection (c) to read as  
13 follows:

14 (a) A telecommunications utility that holds a certificate  
15 of operating authority or a service provider certificate of  
16 operating authority may not charge a higher amount for originating  
17 or terminating intrastate switched access than the prevailing rates  
18 charged by the holder of the certificate of convenience and  
19 necessity or the holder of a certificate of operating authority  
20 issued under Chapter 65 in whose territory the call originated or  
21 terminated unless:

22 (1) the commission specifically approves the higher  
23 rate; or

24 (2) subject to commission review, the  
25 telecommunications utility establishes statewide average composite  
26 originating and terminating intrastate switched access rates based  
27 on a reasonable approximation of traffic originating and

1 terminating between all holders of certificates of convenience and  
2 necessity in this state.

3 (c) Notwithstanding Subsection (a), Chapter 65 governs the  
4 switched access rates of a company that holds a certificate of  
5 operating authority issued under Chapter 65.

6 SECTION 4. Subchapter D, Chapter 52, Utilities Code, is  
7 amended by adding Section 52.156 to read as follows:

8 Sec. 52.156. RETAIL RATES, TERMS, AND CONDITIONS. A  
9 telecommunications utility may not:

10 (1) establish a retail rate, term, or condition that  
11 is anticompetitive or unreasonably preferential, prejudicial, or  
12 discriminatory; or

13 (2) engage in predatory pricing or attempt to engage  
14 in predatory pricing.

15 SECTION 5. Section 54.202, Utilities Code, is amended by  
16 adding Subsection (c) to read as follows:

17 (c) This section may not be construed to prevent a  
18 municipally owned utility from providing to its energy customers,  
19 either directly or indirectly, any energy related service involving  
20 the transfer or receipt of information or data concerning the use,  
21 measurement, monitoring, or management of energy utility services  
22 provided by the municipally owned utility, including services such  
23 as load management or automated meter reading.

24 SECTION 6. Subsections (a), (b), and (c), Section 54.204,  
25 Utilities Code, are amended to read as follows:

26 (a) Notwithstanding Section 14.008, a municipality or a  
27 municipally owned utility may not discriminate against a

1 certificated telecommunications provider [~~telecommunications~~  
2 ~~utility~~] regarding:

3 (1) the authorization or placement of a  
4 [~~telecommunications~~] facility in a public right-of-way;

5 (2) access to a building; or

6 (3) a municipal utility pole attachment rate or term[  
7 ~~to the extent not addressed by federal law~~].

8 (b) In granting consent, a franchise, or a permit for the  
9 use of a public street, alley, or right-of-way within its municipal  
10 boundaries, a municipality or municipally owned utility may not  
11 discriminate in favor of or against a certificated  
12 telecommunications provider [~~telecommunications utility that holds~~  
13 ~~or has applied for a certificate of convenience and necessity, a~~  
14 ~~certificate of operating authority, or a service provider~~  
15 ~~certificate of operating authority~~] regarding:

16 (1) municipal utility pole attachment or underground  
17 conduit rates or terms[~~, to the extent not addressed by federal~~  
18 ~~law~~]; or

19 (2) the authorization, placement, replacement, or  
20 removal of a [~~telecommunications~~] facility in a public right-of-way  
21 and the reasonable compensation for the authorization, placement,  
22 replacement, or removal regardless of whether the compensation is  
23 in the form of:

24 (A) money;

25 (B) services;

26 (C) use of facilities; or

27 (D) another kind of consideration.

1           (c) A municipality or a municipally owned [~~Notwithstanding~~  
2 ~~Subsection (b)(1), a municipal]~~ utility may not charge any entity,  
3 regardless of the nature of the services provided by that entity, a  
4 pole attachment rate or underground conduit rate that exceeds the  
5 fee the municipality or municipally owned utility would be  
6 permitted to charge under rules adopted by the Federal  
7 Communications Commission under 47 U.S.C. Section 224(e) if the  
8 municipality's or municipally owned utility's rates were regulated  
9 under federal law and the rules of the Federal Communications  
10 Commission. In addition, not later than September 1, 2006, a  
11 municipality or municipally owned utility shall charge a single,  
12 uniform pole attachment or underground conduit rate to all entities  
13 that are not affiliated with the municipality or municipally owned  
14 utility regardless of the services carried over the networks  
15 attached to the poles or underground conduit.

16           SECTION 7. Section 54.251, Utilities Code, is amended by  
17 amending Subsection (b) and adding Subsection (c) to read as  
18 follows:

19           (b) Except as specifically determined otherwise by the  
20 commission under this subchapter or Subchapter G, the holder of a  
21 certificate of convenience and necessity, or the holder of a  
22 certificate of operating authority issued under Chapter 65, for an  
23 area has the obligations of a provider of last resort regardless of  
24 whether another provider has a certificate of operating authority  
25 or service provider certificate of operating authority for that  
26 area.

27           (c) A certificate holder may meet the holder's provider of

1 last resort obligations using any available technology.  
2 Notwithstanding any provision of Chapter 56, the commission may  
3 adjust disbursements from the universal service fund to companies  
4 using technologies other than traditional wireline or landline  
5 technologies to meet provider of last resort obligations. As  
6 determined by the commission, the certificate holder shall meet  
7 minimum quality of service standards, including standards for 911  
8 service, comparable to those established for traditional wireline  
9 or landline technologies and shall offer services at a price  
10 comparable to the monthly service charge for comparable services in  
11 that exchange or the provider's nearest exchange.

12 SECTION 8. Subchapter G, Chapter 54, Utilities Code, is  
13 amended by adding Section 54.3015 to read as follows:

14 Sec. 54.3015. APPLICABILITY OF SUBCHAPTER. This subchapter  
15 applies to a holder of a certificate of operating authority issued  
16 under Chapter 65 in the same manner and to the same extent this  
17 subchapter applies to a holder of a certificate of convenience and  
18 necessity.

19 SECTION 9. Section 55.015, Utilities Code, is amended by  
20 amending Subsections (a), (c), and (d) and adding Subsections  
21 (b-1), (d-1), and (d-2) to read as follows:

22 (a) The commission shall adopt rules prohibiting a  
23 certificated provider of local exchange telephone service  
24 [telecommunications provider] from discontinuing basic network  
25 services listed in Section 58.051 [local exchange telephone  
26 service] to a consumer who receives lifeline service because of  
27 nonpayment by the consumer of charges for other services billed by

1 the provider, including interexchange telecommunications [~~long~~  
2 ~~distance~~] service.

3 (b-1) The commission shall adopt rules requiring  
4 certificated providers of local exchange telephone service to  
5 implement procedures to ensure that all consumers are clearly  
6 informed both orally and in writing of the existence of the lifeline  
7 service program when they request or initiate service or change  
8 service locations or providers. On or before June 1, 2006, the  
9 commission shall enter into a memorandum of understanding with the  
10 Health and Human Services Commission, and, to the maximum extent  
11 feasible, housing authorities in the principal cities of each  
12 metropolitan statistical area, to improve enrollment rates in the  
13 lifeline service program.

14 (c) A certificated provider of local exchange telephone  
15 service [~~telecommunications provider~~] may block a lifeline service  
16 participant's access to all interexchange telecommunications [~~long~~  
17 ~~distance~~] service except toll-free numbers when the participant  
18 owes an outstanding amount for that service. The provider  
19 [~~telecommunications provider~~] shall remove the block without  
20 additional cost to the participant on payment of the outstanding  
21 amount.

22 (d) A certificated provider of local exchange telephone  
23 service [~~telecommunications provider~~] shall offer a consumer who  
24 applies for or receives lifeline service the option of blocking all  
25 toll calls or, if technically capable, placing a limit on the amount  
26 of toll calls. The provider may not charge the consumer an  
27 administrative charge or other additional amount for the blocking

1 service.

2 (d-1) A certificated provider of local exchange telephone  
3 service shall provide access to lifeline service to a customer  
4 whose income is not more than 150 percent of the applicable income  
5 level established by the federal poverty guidelines or in whose  
6 household resides a person who receives or has a child who receives:

7 (1) Medicaid;

8 (2) food stamps;

9 (3) Supplemental Security Income;

10 (4) federal public housing assistance;

11 (5) Low Income Home Energy Assistance Program (LIHEAP)  
12 assistance; or

13 (6) health benefits coverage under the state child  
14 health plan under Chapter 62, Health and Safety Code.

15 (d-2) A certificated provider of local exchange telephone  
16 service shall provide consumers who apply for or receive lifeline  
17 service access to available vertical services or custom calling  
18 features, including caller ID, call waiting, and call blocking, at  
19 the same price as other consumers. Lifeline discounts shall only  
20 apply to that portion of the bill that is for basic network service.

21 SECTION 10. Subchapter A, Chapter 55, Utilities Code, is  
22 amended by adding Section 55.017 to read as follows:

23 Sec. 55.017. IDENTIFICATION REQUIRED. (a) A  
24 representative of a telecommunications provider or a video or cable  
25 service provider that has an easement in or a right-of-way over or  
26 through real property must show proof of identification to the  
27 owner of the real property when entering the property if requested



1 by the owner.

2 (b) This section does not apply to regularly scheduled  
3 service readings or examinations.

4 SECTION 11. Subchapter H, Chapter 55, Utilities Code, is  
5 amended by adding Section 55.1735 to read as follows:

6 Sec. 55.1735. CHARGE FOR PAY PHONE ACCESS LINE. The charge  
7 or surcharge a local exchange company imposes for an access line  
8 used to provide pay telephone service in an exchange may not exceed  
9 the amount of the charge or surcharge the company imposes for an  
10 access line used for regular business purposes in that exchange.

11 SECTION 12. Section 56.021, Utilities Code, is amended to  
12 read as follows:

13 Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The  
14 commission shall adopt and enforce rules requiring local exchange  
15 companies to establish a universal service fund to:

16 (1) assist telecommunications providers in providing  
17 basic local telecommunications service at reasonable rates in high  
18 cost rural areas;

19 (2) reimburse the telecommunications carrier that  
20 provides the statewide telecommunications relay access service  
21 under Subchapter D;

22 (3) finance the specialized telecommunications  
23 assistance program established under Subchapter E;

24 (4) reimburse the department, the Texas Commission for  
25 the Deaf and Hard of Hearing, and the commission for costs incurred  
26 in implementing this chapter and Chapter 57;

27 (5) reimburse a telecommunications carrier providing

1 lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as  
2 amended;

3 (6) finance the implementation and administration of  
4 an integrated eligibility process created under Section 17.007 for  
5 customer service discounts relating to telecommunications  
6 services, including outreach expenses the commission determines  
7 are reasonable and necessary;

8 (7) reimburse a designated provider under Subchapter  
9 F; ~~and~~

10 (8) reimburse a successor utility under Subchapter G;  
11 and

12 (9) finance the program established under Subchapter  
13 H.

14 SECTION 13. Subsection (a), Section 56.025, Utilities Code,  
15 is amended to read as follows:

16 (a) In addition to the authority provided by Section 56.021,  
17 for each local exchange company that serves fewer than 31,000 [~~five~~  
18 ~~million~~] access lines and each cooperative, the commission:

19 (1) may adopt a mechanism necessary to maintain  
20 reasonable rates for local exchange telephone service; and

21 (2) shall adopt rules to expand the universal service  
22 fund in the circumstances prescribed by this section.

23 SECTION 14. Section 56.026, Utilities Code, is amended by  
24 adding Subsection (e) to read as follows:

25 (e) This subsection and Subsections (c) and (d) expire  
26 August 31, 2007.

27 SECTION 15. Subchapter B, Chapter 56, Utilities Code, is

1 amended by adding Sections 56.029, 56.030, and 56.031 to read as  
2 follows:

3 Sec. 56.029. UNIVERSAL SERVICE FUND STUDY; ATTESTATION  
4 REQUIREMENT. (a) The commission shall conduct a review and  
5 evaluation of whether the universal service fund accomplishes the  
6 fund's purposes as prescribed by Section 56.021 and the  
7 commission's final orders issued in Docket No. 18515 and Docket No.  
8 18516. The evaluation shall determine whether the fund's purposes  
9 have been sufficiently achieved, whether the fund should be  
10 abolished or phased out, whether the fund should be brought within  
11 the state treasury, and whether the entities receiving those funds  
12 are spending the money for its intended purposes. The evaluation  
13 must include a forward-looking, comprehensive assessment of the  
14 appropriate use of the money in the fund and the manner in which  
15 that money is collected and disbursed.

16 (b) Not later than January 1, 2006, the commission shall  
17 require telecommunications providers receiving disbursements under  
18 the universal service fund to provide to the commission the  
19 information that the commission determines is necessary to  
20 discharge the commission's duties under this section, including  
21 information necessary to review and evaluate how money is collected  
22 for the universal service fund and expended.

23 (c) Information provided under Subsection (b) is  
24 confidential and is not subject to disclosure under Chapter 552,  
25 Government Code.

26 (d) The commission may classify telecommunications  
27 providers as the commission considers appropriate for efficiency

1 and may permit providers to share the cost of developing  
2 information the commission determines is necessary to discharge the  
3 commission's responsibilities under this section.

4 (e) Not later than January 5, 2007, the commission shall  
5 deliver to the legislature a report for the legislature's revision  
6 and approval on the results of the review and evaluation. The  
7 report must:

8 (1) include recommendations that are consistent with  
9 the policies provided by this title;

10 (2) include the commission's assessment of the  
11 universal service fund, including:

12 (A) how the money in the fund should be  
13 collected;

14 (B) how the money in the fund should be disbursed  
15 and the purposes for which the money should be used by the  
16 telecommunications provider receiving the money; and

17 (C) any recommendations the commission has in  
18 relation to accountability for use of the money in the fund,  
19 including the usefulness of the attestation required by Subsection  
20 (g); and

21 (3) include recommendations that ensure that a  
22 telecommunications provider's support from the universal service  
23 fund for a geographic area is consistent with Section 56.021 and the  
24 commission's final orders issued in Docket No. 18515 and Docket No.  
25 18516.

26 (f) The evaluation shall determine whether the fund's  
27 purposes have been sufficiently achieved, whether the fund should

1 be abolished or phased out, whether the fund should be brought  
2 within the state treasury, and whether the entities receiving those  
3 funds are spending the money for its intended purposes.

4 (g) Not later than December 31, 2005, each  
5 telecommunications provider receiving universal service fund money  
6 shall file with the commission an affidavit attesting that the  
7 money from the fund has been used in a manner that is consistent  
8 with the purposes provided by Section 56.021 and the commission's  
9 final orders issued in Docket No. 18515 and Docket No. 18516.

10 (h) In addition to the study required by this section, the  
11 commission shall compile information necessary to determine  
12 whether the current funding mechanism for the universal service  
13 fund will be adequate in the future to sustain the purposes for  
14 which the fund was created considering the development of new  
15 technologies that are not subject to the existing funding mechanism  
16 and the shift in jurisdictional control from this state to the  
17 federal government. The commission shall also review and make  
18 recommendations on any mechanisms adopted under Section 56.025.  
19 Not later than January 5, 2007, the commission shall deliver to the  
20 legislature a report on these issues. If the commission determines  
21 that the existing funding mechanism is not adequate, or proposes to  
22 change the manner or level of current funding, the commission must  
23 include recommendations for alternative funding and basic service  
24 pricing methods that will be adequate and are consistent with a  
25 policy of technology and competitive neutrality in the assessment  
26 of fees and other state-imposed economic burdens.

27 (i) This section expires September 1, 2007.

1       Sec. 56.030. AFFIDAVITS OF COMPLIANCE. On or before  
2 September 1 of each year, a telecommunications provider that  
3 receives disbursements from the universal service fund shall file  
4 with the commission an affidavit certifying that the  
5 telecommunications provider is in compliance with the requirements  
6 for receiving money from the universal service fund and  
7 requirements regarding the use of money from each universal service  
8 fund program for which the telecommunications provider receives  
9 disbursements.

10       Sec. 56.031. ADJUSTMENTS. The commission may revise the  
11 monthly per line support amounts to be made available from the Texas  
12 High Cost Universal Service Plan and from the Small and Rural  
13 Incumbent Local Exchange Company Universal Service Plan at any time  
14 after September 1, 2007, after notice and an opportunity for  
15 hearing. In determining appropriate monthly per line support  
16 amounts, the commission shall consider the adequacy of basic rates  
17 to support universal service.

18       SECTION 16. Subchapter B, Chapter 56, Utilities Code, is  
19 amended by adding Section 56.032 to read as follows:

20       Sec. 56.032. COMMISSION REVIEW AND EVALUATION OF DISTANCE  
21 LEARNING DISCOUNTS AND PRIVATE NETWORK SERVICES FOR CERTAIN  
22 ENTITIES. (a) On or before October 1, 2005, the commission shall  
23 initiate a study for the purpose of evaluating a new funding  
24 mechanism to provide financial support to all telecommunications  
25 utilities that provide discounts or private network services at  
26 prescribed rates to the entities identified in Subchapter B,  
27 Chapter 57, Subchapter G, Chapter 58, and Subchapter D, Chapter 59.

1       (b) The study must include an evaluation of alternative  
2 sources of funding such support, including utilizing federal E-rate  
3 funding, and an evaluation of alternative funding mechanisms that  
4 would result in support being made available to all  
5 telecommunications utilities on a nondiscriminatory basis and on a  
6 technology neutral basis in exchange for providing services at  
7 rates comparable to those preferred rates being paid by the  
8 entities identified under Subchapter B, Chapter 57, Subchapter G,  
9 Chapter 58, and Subchapter D, Chapter 59, provisions.

10       (c) The commission shall conduct necessary proceedings to  
11 evaluate the appropriate funding mechanism and the appropriate  
12 method for determining the amount of support to be made available to  
13 telecommunications utilities that provide discounts to entities  
14 listed in Subsection (b).

15       (d) On or before November 15, 2006, the commission shall  
16 issue a report to the speaker of the house of representatives and  
17 the lieutenant governor on the viability of establishing a new  
18 program or funding mechanism through which support shall be funded  
19 and disbursed in exchange for providing discounts to the entities  
20 listed in Subsection (b). The commission shall include in the  
21 report its findings regarding the cost of any new funding  
22 mechanism, the benefit of establishing a new program or funding  
23 mechanism, and any other relevant information the commission deems  
24 appropriate to assist the legislature in its review of discounts  
25 for distance learning and private network services.

26       (e) This section expires September 1, 2007.

27       SECTION 17. Chapter 56, Utilities Code, is amended by

1 adding Subchapter H to read as follows:

2 SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

3 Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. The  
4 commission by rule shall establish a program to provide from the  
5 universal service fund financial assistance for a free telephone  
6 service for blind and visually impaired persons that offers the  
7 text of newspapers using synthetic speech. The commission may  
8 adopt rules to implement the program.

9 SECTION 18. Section 58.051, Utilities Code, is amended by  
10 amending Subsection (a) and adding Subsections (a-1), (c), and (d)  
11 to read as follows:

12 (a) Unless reclassified under Section 58.024, the following  
13 services are basic network services:

14 (1) flat rate residential local exchange telephone  
15 service, including primary directory listings and the receipt of a  
16 directory and any applicable mileage or zone charges;

17 (2) residential tone dialing service;

18 (3) lifeline and tel-assistance service;

19 (4) service connection for basic residential  
20 services;

21 (5) direct inward dialing service for basic  
22 residential services;

23 (6) private pay telephone access service;

24 (7) call trap and trace service;

25 (8) access for all residential and business end users  
26 to 911 service provided by a local authority and access to dual  
27 party relay service;



1 (9) mandatory residential extended area service  
2 arrangements; and

3 (10) mandatory residential extended metropolitan  
4 service or other mandatory residential toll-free calling  
5 arrangements[~~, and~~

6 [~~(11) residential call waiting service~~].

7 (a-1) Notwithstanding Subsection (a) and Section 58.151,  
8 basic network services include residential caller identification  
9 services if the customer to whom the service is billed is at least  
10 65 years of age.

11 (c) At the election of the affected incumbent local exchange  
12 company, the price for basic network service shall also include the  
13 fees and charges for any mandatory extended area service  
14 arrangements, mandatory expanded toll-free calling plans, and any  
15 other service included in the definition of basic network service.

16 (d) A nonpermanent expanded toll-free local calling service  
17 surcharge established by the commission to recover the costs of  
18 mandatory expanded toll-free local calling service:

19 (1) is considered a part of basic network service;

20 (2) may not be aggregated under Subsection (c); and

21 (3) continues to be transitioned in accordance with  
22 commission orders and substantive rules.

23 SECTION 19. Section 58.151, Utilities Code, is amended to  
24 read as follows:

25 Sec. 58.151. SERVICES INCLUDED. The following services are  
26 classified as nonbasic services:

27 (1) flat rate business local exchange telephone

1 service, including primary directory listings and the receipt of a  
2 directory, and any applicable mileage or zone charges, except that  
3 the prices for this service shall be capped until September 1, 2005,  
4 at the prices in effect on September 1, 1999;

5 (2) business tone dialing service, except that the  
6 prices for this service shall be capped until September 1, 2005, at  
7 the prices in effect on September 1, 1999;

8 (3) service connection for all business services,  
9 except that the prices for this service shall be capped until  
10 September 1, 2005, at the prices in effect on September 1, 1999;

11 (4) direct inward dialing for basic business services,  
12 except that the prices for this service shall be capped until  
13 September 1, 2005, at the prices in effect on September 1, 1999;

14 (5) "1-plus" intraLATA message toll services;

15 (6) 0+ and 0- operator services;

16 (7) call waiting, call forwarding, and custom calling,  
17 except that:

18 (A) residential call waiting service shall be  
19 classified as a basic network service until July 1, 2006; and

20 (B) for an electing company subject to Section  
21 58.301, prices for residential call forwarding and other custom  
22 calling services shall be capped at the prices in effect on  
23 September 1, 1999, until the electing company implements the  
24 reduction in switched access rates described by Section 58.301(2);

25 (8) call return, caller identification, and call  
26 control options, except that, for an electing company subject to  
27 Section 58.301, prices for residential call return, caller

1 identification, and call control options shall be capped at the  
2 prices in effect on September 1, 1999, until the electing company  
3 implements the reduction in switched access rates described by  
4 Section 58.301(2);

5 (9) central office based PBX-type services;

6 (10) billing and collection services, including  
7 installment billing and late payment charges for customers of the  
8 electing company;

9 (11) integrated services digital network (ISDN)  
10 services, except that prices for Basic Rate Interface (BRI) ISDN  
11 services, which comprise up to two 64 Kbps B-channels and one 16  
12 Kbps D-channel, shall be capped until September 1, 2005, at the  
13 prices in effect on September 1, 1999;

14 (12) new services;

15 (13) directory assistance services, except that an  
16 electing company shall provide to a residential customer the first  
17 three directory assistance inquiries in a monthly billing cycle at  
18 no charge until July 1, 2006;

19 (14) services described in the WATS tariff as the  
20 tariff existed on January 1, 1995;

21 (15) 800 and foreign exchange services;

22 (16) private line service;

23 (17) special access service;

24 (18) services from public pay telephones;

25 (19) paging services and mobile services (IMTS);

26 (20) 911 services provided to a local authority that  
27 are available from another provider;

- 1           (21) speed dialing;
- 2           (22) three-way calling; and
- 3           (23) all other services subject to the commission's
- 4 jurisdiction that are not specifically classified as basic network
- 5 services in Section 58.051, except that nothing in this section
- 6 shall preclude a customer from subscribing to a local flat rate
- 7 residential or business line for a computer modem or a facsimile
- 8 machine.

9           SECTION 20. Subsection (a), Section 58.258, Utilities Code,

10 is amended to read as follows:

11           (a) Notwithstanding the pricing flexibility authorized by

12 this subtitle, an electing company's rates for private network

13 services may not be increased [~~on or~~] before January 1, 2012 [~~the~~

14 ~~sixth anniversary of the company's date of election~~]. However, an

15 electing company may increase a rate in accordance with the

16 provisions of a customer specific contract.

17           SECTION 21. Subchapter G, Chapter 58, Utilities Code, is

18 amended by adding Section 58.268 to read as follows:

19           Sec. 58.268. CONTINUATION OF OBLIGATION. Notwithstanding

20 any other provision of this title, an electing company shall

21 continue to comply with this subchapter until January 1, 2012,

22 regardless of:

- 23           (1) the date the company elected under this chapter;
- 24 or
- 25           (2) any action taken in relation to that company under
- 26 Chapter 65.

27           SECTION 22. Subsection (a), Section 59.077, Utilities Code,

1 is amended to read as follows:

2 (a) Notwithstanding the pricing flexibility authorized by  
3 this subtitle, an electing company's rates for private network  
4 services may not be increased [~~on or~~] before January 1, 2012 [~~the~~  
5 ~~sixth anniversary of the company's election date~~].

6 SECTION 23. Subchapter D, Chapter 59, Utilities Code, is  
7 amended by adding Section 59.083 to read as follows:

8 Sec. 59.083. CONTINUATION OF OBLIGATION. Notwithstanding  
9 any other provision of this title, an electing company shall  
10 continue to comply with this subchapter until January 1, 2012,  
11 regardless of:

12 (1) the date the company elected under this chapter;  
13 or

14 (2) any action taken in relation to that company under  
15 Chapter 65.

16 SECTION 24. Chapter 60, Utilities Code, is amended by  
17 adding Subchapter J to read as follows:

18 SUBCHAPTER J. WHOLESALE CODE OF CONDUCT

19 Sec. 60.201. STATEMENT OF POLICY. It is the policy of this  
20 state that providers of telecommunications services operate in a  
21 manner that is consistent with minimum standards to provide  
22 customers with continued competitive choices.

23 Sec. 60.202. APPLICABILITY OF SUBCHAPTER. A provision of  
24 this subchapter applies only to the extent the provision has not  
25 been preempted by federal law or a rule, regulation, or order of the  
26 Federal Communications Commission.

27 Sec. 60.203. MINIMUM SERVICE REQUIREMENTS. A

1 telecommunications provider may not unreasonably:

2 (1) discriminate against another provider by refusing  
3 access to an exchange;

4 (2) refuse or delay an interconnection to another  
5 provider;

6 (3) degrade the quality of access the  
7 telecommunications provider provides to another provider;

8 (4) impair the speed, quality, or efficiency of a line  
9 used by another provider;

10 (5) fail to fully disclose in a timely manner on  
11 request all available information necessary to design equipment  
12 that will meet the specifications of the network; or

13 (6) refuse or delay access by a person to another  
14 provider.

15 Sec. 60.204. INTERCONNECTION. A telecommunications provider  
16 shall provide interconnection with other telecommunications  
17 providers' networks for the transmission and routing of telephone  
18 exchange service and exchange access.

19 Sec. 60.205. NUMBER PORTABILITY. A telecommunications  
20 provider shall provide number portability in accordance with  
21 federal requirements.

22 Sec. 60.206. DUTY TO NEGOTIATE. A telecommunications  
23 provider shall negotiate in good faith the terms and conditions of  
24 any agreement.

25 Sec. 60.207. DIALING PARITY. (a) A telecommunications  
26 provider shall provide dialing parity to competing  
27 telecommunications providers of telephone exchange service and

1 telephone toll service.

2 (b) A telecommunications provider shall provide  
3 nondiscriminatory access to telephone numbers, operator services,  
4 directory assistance, and directory listings and may not delay that  
5 access unreasonably.

6 Sec. 60.208. ACCESS TO RIGHTS-OF-WAY. A telecommunications  
7 provider shall provide access to poles, ducts, conduits, and  
8 rights-of-way to competing providers of telecommunications service on  
9 rates, terms, and conditions that are just, reasonable, and  
10 nondiscriminatory.

11 Sec. 60.209. RECIPROCAL COMPENSATION. A telecommunications  
12 provider shall establish reciprocal compensation arrangements for the  
13 transport and termination of telecommunications.

14 Sec. 60.210. ACCESS TO SERVICES. A telecommunications  
15 provider shall provide access to:

16 (1) 911 and E-911 service;

17 (2) directory assistance service to allow other  
18 telecommunications providers' customers to obtain telephone  
19 numbers; and

20 (3) operator call completion service.

21 SECTION 25. Subchapter A, Chapter 62, Utilities Code, is  
22 amended by adding Section 62.003 to read as follows:

23 Sec. 62.003. REQUIREMENTS RELATING TO AUDIO AND VIDEO  
24 PROGRAMMING. (a) This section applies only to a provider of  
25 advanced services or local exchange telephone service that has more  
26 than 500,000 access lines in service in this state and that delivers  
27 audio programming with localized content or video programming to

1 its subscribers in those service areas where such provider is not  
2 regulated as a cable system under federal law.

3 (b) Notwithstanding any other provision of this title, a  
4 provider of advanced services or local exchange telephone service  
5 shall provide subscribers access to the signals of the local  
6 broadcast television and radio stations licensed by the Federal  
7 Communications Commission to serve those subscribers over the air;  
8 provided with respect to low power television stations, this  
9 section shall only apply to those low power television stations  
10 that are "qualified low power stations" as defined in 47 U.S.C.  
11 Section 534(h)(2).

12 (c) To facilitate access by subscribers of a provider of  
13 advanced services or local exchange telephone service to the  
14 signals of local broadcast stations, a station either shall be  
15 granted mandatory carriage or may request retransmission consent  
16 with the provider.

17 (d) This title does not require a provider of advanced  
18 services or local exchange telephone service to provide a  
19 television or radio station valuable consideration in exchange for  
20 carriage.

21 (e) A provider of advanced services or local exchange  
22 telephone service shall transmit without degradation the signals a  
23 local broadcast station delivers to the provider. The transmission  
24 quality offered a broadcast station may not be lower than the  
25 quality made available to another broadcast station or video or  
26 audio programming source.

27 (f) A provider of advanced services or local exchange



1 telephone service that delivers audio or video programming to its  
2 subscribers may not:

3 (1) discriminate among broadcast stations or between  
4 broadcast stations on the one hand and programming providers on the  
5 other with respect to transmission of their signals, taking into  
6 account any consideration afforded a provider of advanced services  
7 or local exchange telephone service by any such programming  
8 provider or broadcast station; or

9 (2) delete, change, or alter a copyright  
10 identification transmitted as part of a broadcast station's signal.

11 (g) A provider of advanced services or local exchange  
12 telephone service that delivers audio or video programming shall be  
13 subject to any applicable network nonduplication or syndicated  
14 exclusivity rules promulgated by the Federal Communications  
15 Commission to the extent applicable to cable systems as defined by  
16 the commission.

17 (h) A provider of advanced services or local exchange  
18 telephone service that delivers audio or video programming to its  
19 subscribers shall include all programming providers in a subscriber  
20 programming guide, if any, that lists program schedules.

21 SECTION 26. Subtitle C, Title 2, Utilities Code, is amended  
22 by adding Chapter 65 to read as follows:

23 CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE

24 COMPANY MARKETS

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 65.001. STATEMENT OF POLICY. It is the policy of this  
27 state to provide for full rate and service competition in the

1 telecommunications market of this state so that customers may  
2 benefit from innovations in service quality and market-based  
3 pricing.

4 Sec. 65.002. DEFINITIONS. In this chapter:

5 (1) "Deregulated company" means an incumbent local  
6 exchange company for which all of the company's markets have been  
7 deregulated.

8 (2) "Market" means an exchange in which an incumbent  
9 local exchange company provides residential local exchange  
10 telephone service.

11 (3) "Regulated company" means an incumbent local  
12 exchange company for which none of the company's markets have been  
13 deregulated.

14 (4) "Stand-alone residential local exchange voice  
15 service" means:

16 (A) residential tone dialing service;

17 (B) services and functionalities supported under  
18 the lifeline program;

19 (C) access for all residential end users to 911  
20 service provided by a local authority and access to dual party relay  
21 service;

22 (D) at the election of the incumbent local  
23 exchange company, mandatory residential extended area service  
24 arrangements, mandatory residential extended metropolitan service  
25 or other mandatory residential toll-free calling arrangements,  
26 mandatory expanded local calling service arrangements, or another  
27 service that a company is required under a tariff to provide to a

1 customer who subscribes or may subscribe to basic network services;

2 (E) flat rate residential local exchange  
3 telephone service delivered by landline, but only if the service is  
4 ordered and received independent of:

5 (i) a service classified as a nonbasic  
6 service under Section 58.151 or residential call waiting service;

7 (ii) a package of services that includes a  
8 service classified as a nonbasic service under Section 58.151; or

9 (iii) another flat rate residential local  
10 exchange service delivered by landline; and

11 (F) residential caller identification services  
12 if the customer to whom the service is billed is at least 65 years of  
13 age.

14 (5) "Transitioning company" means an incumbent local  
15 exchange company for which at least one, but not all, of the  
16 company's markets has been deregulated.

17 Sec. 65.003. COMMISSION AUTHORITY. (a) Notwithstanding  
18 any other provisions of this title, the commission has authority to  
19 implement and enforce this chapter.

20 (b) The commission may adopt rules and conduct proceedings  
21 necessary to administer and enforce this chapter, including rules  
22 to determine whether a market should remain regulated, should be  
23 deregulated, or should be reregulated.

24 Sec. 65.004. INFORMATION. (a) The commission may collect  
25 and compile information from all telecommunications providers as  
26 necessary to implement and enforce this chapter.

27 (b) The commission shall maintain the confidentiality of

1 information collected under this chapter that is claimed to be  
2 confidential for competitive purposes. Information that is claimed  
3 to be confidential is exempt from disclosure under Chapter 552,  
4 Government Code.

5 Sec. 65.005. CUSTOMER PROTECTION. This chapter does not  
6 affect a customer's right to complain to the commission regarding a  
7 telecommunications provider.

8 [Sections 65.006-65.050 reserved for expansion]

9 SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED

10 Sec. 65.051. MARKETS DEREGULATED. (a) Except as provided  
11 by Subsection (b), all markets of all incumbent local exchange  
12 companies are deregulated on January 1, 2006, unless the commission  
13 determines under Section 65.052(a) that a market or markets should  
14 remain regulated.

15 (b) A market of an incumbent local exchange company in which  
16 the population in the area included in the market is less than  
17 30,000 is deregulated on January 1, 2007, unless the commission  
18 determines under Section 65.052(f) that the market should remain  
19 regulated.

20 Sec. 65.052. DETERMINATION OF WHETHER A MARKET SHOULD  
21 REMAIN REGULATED. (a) Except as provided by Subsection (f), the  
22 commission shall:

23 (1) determine whether each market of an incumbent  
24 local exchange company should remain regulated on and after January  
25 1, 2006; and

26 (2) issue a final order classifying the company in  
27 accordance with this section effective January 1, 2006.

1       (b) In making a determination under Subsection (a), the  
2 commission may not determine that a market should remain regulated  
3 if:

4           (1) the population in the area included in the market  
5 is at least 100,000; or

6           (2) the population in the area included in the market  
7 is at least 30,000 but less than 100,000 and, in addition to the  
8 incumbent local exchange company, there are at least three  
9 competitors of which:

10           (A) at least one is a telecommunications provider  
11 that holds a certificate of operating authority or service provider  
12 certificate of operating authority and provides residential local  
13 exchange telephone service in the market;

14           (B) at least one is an entity providing  
15 residential telephone service in the market using facilities that  
16 the entity or its affiliate owns; and

17           (C) at least one is a provider in that market of  
18 commercial mobile service as defined by Section 332(d),  
19 Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal  
20 Communications Commission rules, and the Omnibus Budget  
21 Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not  
22 affiliated with the incumbent local exchange company.

23       (c) The commission shall issue an order classifying an  
24 incumbent local exchange company as a deregulated company that is  
25 subject to Subchapter C if:

26           (1) the company does not have any markets in which the  
27 population in the area included in the market is less than 30,000;

1 and

2 (2) the commission does not determine that a market of  
3 the company should remain regulated on and after January 1, 2006.

4 (d) Regardless of the population in the area included in an  
5 incumbent local exchange company's markets, the commission shall  
6 issue an order classifying the company as a transitioning company  
7 that is subject to Subchapter D if the commission determines that  
8 one or more, but not all, of the markets of the company should  
9 remain regulated on and after January 1, 2006.

10 (e) The commission shall issue an order classifying the  
11 company as a regulated company that is subject to the provisions of  
12 this title that applied to the company on September 1, 2005, if the  
13 commission determines that all of the markets of the company in  
14 which the population in each area included in the markets is at  
15 least 30,000 should remain regulated on and after January 1, 2006.  
16 This subsection does not affect the authority of a regulated  
17 company to elect under Chapter 58 or 59 after January 1, 2005, and  
18 to be regulated under the chapter under which the company elected.

19 (f) Not later than November 30, 2006, the commission shall  
20 determine whether a market of an incumbent local exchange company  
21 in which the population in the area included in the market is less  
22 than 30,000 should remain regulated on or after January 1, 2007.  
23 The commission by rule shall determine the market test to be applied  
24 in determining whether the market should remain regulated. If the  
25 commission does not determine that the market should remain  
26 regulated on or after January 1, 2007, and the deregulation of that  
27 market results in a transitioning or regulated company no longer

1 meeting the definition of a transitioning or regulated company, as  
2 appropriate, the commission shall issue an order reclassifying the  
3 company appropriately.

4 Sec. 65.053. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS.

5 (a) Notwithstanding Section 65.052, an incumbent local exchange  
6 company may elect to have all of the company's markets remain  
7 regulated on and after January 1, 2006.

8 (b) To make an election under Subsection (a), an incumbent  
9 local exchange company must file an affidavit with the commission  
10 making that election not later than December 1, 2005.

11 (c) If an incumbent local exchange company makes an election  
12 under this section, the commission shall issue an order classifying  
13 the company as a regulated company that is subject to the provisions  
14 of this title that applied to the company on September 1, 2005.  
15 This subsection does not affect the authority of a regulated  
16 company to elect under Chapter 58 or 59 after January 1, 2005, and  
17 to be regulated under the chapter under which the company elected.

18 Sec. 65.054. PETITION FOR DEREGULATION. (a) After July 1,  
19 2007, a company may petition the commission to deregulate a market  
20 that the commission previously determined should remain regulated.

21 (b) If the commission deregulates a market under this  
22 section and the deregulation results in the transitioning or  
23 regulated company no longer meeting the definition of a  
24 transitioning or regulated company, as appropriate, the commission  
25 shall issue an order reclassifying the company appropriately.

26 Sec. 65.055. COMMISSION AUTHORITY TO REREGULATE CERTAIN  
27 MARKETS. (a) This section applies only to a market of an incumbent

1 local exchange company in which the population in the area included  
2 in the market is less than 100,000.

3 (b) The commission, on its own motion or on a complaint that  
4 the commission considers to have merit, may determine that a market  
5 that was previously deregulated should again be subject to  
6 regulation.

7 (c) The commission by rule shall prescribe the procedures  
8 and standards applicable to a determination under this section.

9 [Sections 65.056-65.100 reserved for expansion]

10 SUBCHAPTER C. DEREGULATED COMPANY

11 Sec. 65.101. ISSUANCE OF CERTIFICATE OF OPERATING  
12 AUTHORITY. (a) A deregulated company may petition the commission  
13 to relinquish the company's certificate of convenience and  
14 necessity and receive a certificate of operating authority.

15 (b) The commission shall issue the deregulated company a  
16 certificate of operating authority and rescind the deregulated  
17 company's certificate of convenience and necessity if the  
18 commission finds that all of the company's markets have been  
19 deregulated under Subchapter B.

20 Sec. 65.102. REQUIREMENTS. (a) A deregulated company that  
21 holds a certificate of operating authority issued under this  
22 subchapter is a nondominant carrier governed in the same manner as a  
23 holder of a certificate of operating authority issued under Chapter  
24 54, except that the deregulated company:

25 (1) retains the obligations of a provider of last  
26 resort under Chapter 54;

27 (2) is subject to the following provisions in the same



1 manner as an incumbent local exchange company that is not  
2 deregulated:

3 (A) Sections 54.156, 54.158, and 54.159;

4 (B) Section 55.012; and

5 (C) Chapter 60; and

6 (3) may not increase the company's rates for  
7 stand-alone residential local exchange voice service before the  
8 date that the commission has the opportunity to revise the monthly  
9 per line support under the Texas High Cost Universal Service Plan  
10 pursuant to Section 56.031, regardless of whether the company is an  
11 electing company under Chapter 58.

12 (b) In each deregulated market, a deregulated company shall  
13 make available to all residential customers uniformly throughout  
14 that market the same price, terms, and conditions for all basic and  
15 non-basic services, consistent with any pricing flexibility  
16 available to such company on or before August 31, 2005.

17 [Sections 65.103-65.150 reserved for expansion]

18 SUBCHAPTER D. TRANSITIONING COMPANY

19 Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING  
20 COMPANY. A transitioning company is governed by this subchapter  
21 and the provisions of this title that applied to the company  
22 immediately before the date the company was classified as a  
23 transitioning company. If there is a conflict between this  
24 subchapter and the other applicable provisions of this title, this  
25 subchapter controls.

26 Sec. 65.152. GENERAL REQUIREMENTS. (a) A transitioning  
27 company may:

1           (1) exercise pricing flexibility in a market in the  
2 manner provided by Section 58.063 one day after providing an  
3 informational notice as required by that section; and

4           (2) introduce a new service in a market in the manner  
5 provided by Section 58.153 one day after providing an informational  
6 notice as required by that section.

7           (b) A transitioning company may not be required to comply  
8 with exchange-specific retail quality of service standards or  
9 reporting requirements in a market that is deregulated.

10           Sec. 65.153. RATE REQUIREMENTS. (a) In a market that  
11 remains regulated, a transitioning company shall price the  
12 company's retail services in accordance with the provisions that  
13 applied to that company immediately before the date the company was  
14 classified as a transitioning company.

15           (b) In a market that is deregulated, a transitioning company  
16 shall price the company's retail services as follows:

17           (1) for all services, other than basic local  
18 telecommunications service, at any price higher than the service's  
19 long run incremental cost; and

20           (2) for basic local telecommunications service, at any  
21 price higher than the lesser of the service's long run incremental  
22 cost or the tariffed price on the date that market was deregulated,  
23 provided that the company may not increase the company's rates for  
24 stand-alone residential local exchange voice service before the  
25 date that the commission has the opportunity to revise the monthly  
26 per line support under the Texas High Cost Universal Service Plan  
27 pursuant to Section 56.031, regardless of whether the company is an

1 electing company under Chapter 58.

2 (c) In each deregulated market, a transitioning company  
3 shall make available to all residential customers uniformly  
4 throughout that market the same price, terms, and conditions for  
5 all basic and non-basic services, consistent with any pricing  
6 flexibility available to such company on or before August 31, 2005.

7 (d) In any market, regardless of whether regulated or  
8 deregulated, the transitioning company may not:

9 (1) establish a retail rate, term, or condition that  
10 is anticompetitive or unreasonably preferential, prejudicial, or  
11 discriminatory;

12 (2) establish a retail rate for a basic or non-basic  
13 service in a deregulated market that is subsidized either directly  
14 or indirectly by a basic or non-basic service provided in an  
15 exchange that is not deregulated; or

16 (3) engage in predatory pricing or attempt to engage  
17 in predatory pricing.

18 (e) A rate that meets the pricing requirements in Subsection  
19 (b) shall be deemed compliant with Subsection (d)(2).

20 [Sections 65.154-65.200 reserved for expansion]

21 SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

22 Sec. 65.201. REDUCTION OF SWITCHED ACCESS RATES BY  
23 DEREGULATED COMPANY. (a) On the date the last market of an  
24 incumbent local exchange company is deregulated, the company shall  
25 reduce both the company's originating and terminating per minute of  
26 use switched access rates in each market to parity with the  
27 company's respective federal originating and terminating per

1 minute of use switched access rates.

2 (b) After reducing the rates under Subsection (a), a  
3 deregulated company shall maintain parity with the company's  
4 federal originating and terminating per minute of use switched  
5 access rates. If the company's federal originating and terminating  
6 per minute of use switched access rates are changed, the company  
7 shall change the company's per minute of use switched access rates  
8 in each market as necessary to re-achieve parity with the company's  
9 federal originating and terminating per minute of use switched  
10 access rates.

11 Sec. 65.202. REDUCTION OF SWITCHED ACCESS RATES BY  
12 TRANSITIONING COMPANY WITH MORE THAN THREE MILLION ACCESS LINES.

13 (a) Notwithstanding any other provision of this title, a  
14 transitioning company that has more than three million access lines  
15 in service in this state on January 1, 2006, shall:

16 (1) on July 1, 2006, reduce both the company's  
17 originating and terminating per minute of use switched access rates  
18 in each market by an amount equal to 33 percent of the difference in  
19 the rates in effect on June 30, 2006, and the company's respective  
20 federal originating and terminating per minute of use switched  
21 access rates;

22 (2) on July 1, 2007, reduce both the company's  
23 originating and terminating per minute of use switched access rates  
24 in each market by an amount equal to 33 percent of the difference in  
25 the rates in effect on June 30, 2006, and the company's respective  
26 federal originating and terminating per minute of use switched  
27 access rates; and

1           (3) on July 1, 2008, reduce both the company's  
2 originating and terminating per minute of use switched access rates  
3 in each market to parity with the company's respective federal  
4 originating and terminating per minute of use switched access  
5 rates.

6           (b) After reducing the rates under Subsection (a), a  
7 transitioning company shall maintain parity with the company's  
8 federal originating and terminating per minute of use switched  
9 access rates. If the company's federal originating and terminating  
10 per minute of use switched access rates are changed, the company  
11 shall change the company's per minute of use switched access rates  
12 in each market as necessary to re-achieve parity with the company's  
13 federal originating and terminating per minute of use switched  
14 access rates.

15           Sec. 65.203. REDUCTION OF SWITCHED ACCESS RATES BY CERTAIN  
16 TRANSITIONING COMPANIES WITH NOT MORE THAN THREE MILLION ACCESS  
17 LINES. (a) Notwithstanding any other provision of this title, a  
18 company that is classified as a transitioning company effective  
19 January 1, 2006, and that has not more than three million access  
20 lines in service in this state on that date shall reduce both the  
21 company's originating and terminating per minute of use switched  
22 access rates in each market in accordance with this section.

23           (b) On July 1, 2006, the transitioning company shall reduce  
24 both the company's originating and terminating per minute of use  
25 switched access rates in each market by an amount equal to the  
26 lesser of:

27           (1) 25 percent of the difference in the company's rates

1 in effect on June 30, 2006, and the company's respective federal  
2 originating and terminating per minute of use switched access rates  
3 in effect on that date; or

4 (2) an amount derived by multiplying that difference  
5 by a percentage derived by dividing the number of the company's  
6 markets that are not regulated on July 1, 2006, by the total number  
7 of the company's markets on December 30, 2005.

8 (c) On July 1, 2007, the transitioning company shall reduce  
9 both the company's originating and terminating per minute of use  
10 switched access rates in each market by an amount equal to the  
11 lesser of:

12 (1) 25 percent of the difference in the company's rates  
13 in effect on June 30, 2006, and the company's respective federal  
14 originating and terminating per minute of use switched access rates  
15 in effect on that date; or

16 (2) an amount derived by multiplying that difference  
17 by a percentage derived by dividing the number of the company's  
18 markets that were deregulated in the prior 12 months by the total  
19 number of the company's markets on December 30, 2005.

20 (d) On July 1, 2008, the transitioning company shall reduce  
21 both the company's originating and terminating per minute of use  
22 switched access rates in each market by an amount equal to the  
23 lesser of:

24 (1) 25 percent of the difference in the company's rates  
25 in effect on June 30, 2006, and the company's respective federal  
26 originating and terminating per minute of use switched access rates  
27 in effect on that date; or

1           (2) an amount derived by multiplying that difference  
2 by a percentage derived by dividing the number of the company's  
3 markets that were deregulated in the prior 12 months by the total  
4 number of the company's markets on December 30, 2005.

5           (e) On July 1, 2009, and each succeeding year thereafter on  
6 July 1, the transitioning company shall reduce both the company's  
7 originating and terminating per minute of use switched access rates  
8 in each market by an amount derived by multiplying the difference in  
9 the company's rates in effect on June 30, 2006, and the company's  
10 respective federal originating and terminating per minute of use  
11 switched access rates in effect on that date by a percentage derived  
12 by dividing the number of the company's markets that were  
13 deregulated in the prior 12 months by the total number of the  
14 company's markets on December 30, 2005, except that a transitioning  
15 company shall be required to reduce both the company's originating  
16 and terminating per minute of use switched access charges to parity  
17 with the company's respective federal originating and terminating  
18 per minute of use switched access charges if more than 75 percent of  
19 the transitioning company's markets are not regulated on July 1 of  
20 2009 or any succeeding year.

21           (f) After reducing the rates under Subsection (e), a  
22 transitioning company shall maintain parity with the company's  
23 federal originating and terminating per minute of use switched  
24 access rates. If the company's federal originating and terminating  
25 per minute of use switched access rates are changed, the company  
26 shall change the company's per minute of use switched access rates  
27 in each market as necessary to re-achieve parity with the company's

1 federal originating and terminating per minute of use switched  
2 access rates.

3 Sec. 65.204. REDUCTION OF SWITCHED ACCESS RATES BY NEWLY  
4 DESIGNATED TRANSITIONING COMPANY. (a) Notwithstanding any other  
5 provision of this title, a company that is classified as a  
6 transitioning company after January 1, 2006, shall reduce both the  
7 company's originating and terminating per minute of use switched  
8 access rates in each market in accordance with this section.

9 (b) On the date the company is classified as a transitioning  
10 company, the company shall reduce both the company's originating  
11 and terminating per minute of use switched access rates in each  
12 market by an amount equal to the lesser of:

13 (1) 25 percent of the difference in the company's rates  
14 in effect on the day before the date the company was classified, and  
15 the company's respective federal originating and terminating per  
16 minute of use switched access rates in effect on that date; or

17 (2) an amount derived by multiplying that difference  
18 by a percentage derived by dividing the number of the company's  
19 markets that are not regulated on the date the company is classified  
20 as a transitioning company by the total number of the company's  
21 markets on December 30, 2005.

22 (c) On the first anniversary of the date the company is  
23 classified as a transitioning company, the company shall reduce  
24 both the company's originating and terminating per minute of use  
25 switched access rates in each market by an amount equal to the  
26 lesser of:

27 (1) 25 percent of the difference in the company's rates



1 in effect on the day before the date the company was classified, and  
2 the company's respective federal originating and terminating per  
3 minute of use switched access rates in effect on that date; or

4 (2) an amount derived by multiplying that difference  
5 by a percentage derived by dividing the number of the company's  
6 markets that were deregulated in the prior 12 months by the total  
7 number of the company's markets on December 30, 2005.

8 (d) On the second anniversary of the date the company is  
9 classified as a transitioning company, the company shall reduce  
10 both the company's originating and terminating per minute of use  
11 switched access rates in each market by an amount equal to the  
12 lesser of:

13 (1) 25 percent of the difference in the company's rates  
14 in effect on the day before the date the company was classified, and  
15 the company's respective federal originating and terminating per  
16 minute of use switched access rates in effect on that date; or

17 (2) an amount derived by multiplying that difference  
18 by a percentage derived by dividing the number of the company's  
19 markets that were deregulated in the prior 12 months by the total  
20 number of the company's markets on December 30, 2005.

21 (e) On the third anniversary of the date the company is  
22 classified as a transitioning company and each anniversary  
23 thereafter, the company shall reduce both the company's originating  
24 and terminating per minute of use switched access rates in each  
25 market by an amount derived by multiplying the difference in the  
26 company's rates in effect on the day before the date the company was  
27 classified as a transitioning company, and the company's respective

1 federal originating and terminating per minute of use switched  
2 access rates in effect on that date by a percentage derived by  
3 dividing the number of the company's markets that were deregulated  
4 in the prior 12 months by the total number of the company's markets  
5 on December 30, 2005, except that a transitioning company shall be  
6 required to reduce both the company's originating and terminating  
7 per minute of use switched access charges to parity with the  
8 company's respective federal originating and terminating per  
9 minute of use switched access charges if more than 75 percent of the  
10 transitioning company's markets are not regulated on July 1 of 2009  
11 or any succeeding year.

12 (f) After reducing the rates under Subsection (e), a  
13 transitioning company shall maintain parity with the company's  
14 federal originating and terminating per minute of use switched  
15 access rates. If the company's federal originating and terminating  
16 per minute of use switched access rates are changed, the company  
17 shall change the company's per minute of use switched access rates  
18 in each market as necessary to re-achieve parity with the company's  
19 federal originating and terminating per minute of use switched  
20 access rates.

21 Sec. 65.205. MAINTENANCE OF REDUCTION OR PARITY.

22 (a) After a deregulated or transitioning company reduces the  
23 company's rates under this subchapter, the company may not increase  
24 those rates above the applicable rates prescribed by this  
25 subchapter.

26 (b) If a transitioning company's federal per minute of use  
27 switched access rates are reduced, the company shall reduce the

1 company's per minute of use switched access rates to not more than  
2 the applicable rates prescribed by this subchapter.

3 (c) Notwithstanding Subsections (a) and (b), a deregulated  
4 or transitioning company may decrease the company's per minute of  
5 use switched access rates to amounts that are less than the  
6 applicable rates prescribed by this subchapter.

7 [Sections 65.206-65.250 reserved for expansion]

8 SUBCHAPTER F. LEGISLATIVE OVERSIGHT COMMITTEE

9 Sec. 65.251. OVERSIGHT COMMITTEE. (a) In this subchapter,  
10 "committee" means the telecommunications competitiveness  
11 legislative oversight committee.

12 (b) The committee is composed of nine members as follows:

13 (1) the chair of the Senate Committee on Business and  
14 Commerce;

15 (2) the chair of the House Committee on Regulated  
16 Industries;

17 (3) three members of the senate appointed by the  
18 lieutenant governor;

19 (4) three members of the house of representatives  
20 appointed by the speaker of the house of representatives; and

21 (5) the chief executive of the Office of Public  
22 Utility Counsel.

23 (c) An appointed member of the committee serves at the  
24 pleasure of the appointing official.

25 Sec. 65.252. COMMITTEE DUTIES. (a) The committee shall  
26 conduct joint public hearings with the commission at least annually  
27 regarding the introduction of full competition to

1 telecommunications services in this state.

2 (b) The commission shall:

3 (1) collect and compile information from all  
4 telecommunications providers as necessary to conduct a hearing  
5 under this section; and

6 (2) maintain the confidentiality of information  
7 collected under this section that is claimed to be confidential for  
8 competitive purposes.

9 (c) Information that is claimed to be confidential under  
10 Subsection (b) is exempt from disclosure under Chapter 552,  
11 Government Code.

12 (d) The commission shall provide to the committee  
13 information regarding rules relating to telecommunications  
14 deregulation proposed by the commission. The committee may submit  
15 comments to the commission on those proposed rules.

16 (e) The committee shall monitor the effectiveness of  
17 telecommunications deregulation, including the fairness of rates,  
18 the quality of service, and the effect of regulation on the normal  
19 forces of competition.

20 (f) The committee may request reports and other information  
21 from the commission as necessary to carry out this subchapter.

22 (g) Not later than November 15 of each even-numbered year,  
23 the committee shall report to the governor, lieutenant governor,  
24 and speaker of the house of representatives on the committee's  
25 activities under this subchapter. The report must include:

26 (1) an analysis of any problems caused by  
27 telecommunications deregulation; and

1           (2) recommendations for any legislative action  
2 necessary to address those problems and to further competition  
3 within the telecommunications industry.

4           SECTION 27. Subtitle C, Title 2, Utilities Code, is amended  
5 by adding Chapter 66 to read as follows:

6           CHAPTER 66. STATE-ISSUED CABLE AND VIDEO FRANCHISE

7           Sec. 66.001. FRANCHISING AUTHORITY. The commission shall  
8 be designated as the franchising authority for a state-issued  
9 franchise for the provision of cable service or video service.

10          Sec. 66.002. DEFINITIONS. In this chapter:

11           (1) "Actual incremental cost" means only current  
12 out-of-pocket expenses for labor, equipment repair, equipment  
13 replacement, and tax expenses directly associated with the labor or  
14 the equipment of a service provider that is necessarily and  
15 directly used to provide what were, under a superseded franchise,  
16 in-kind services, exclusive of any profit or overhead such as  
17 depreciation, amortization, or administrative expense.

18           (2) "Cable service" is defined as set forth in 47  
19 U.S.C. Section 522(6).

20           (3) "Cable service provider" means a person who  
21 provides cable service.

22           (4) "Communications network" means a component or  
23 facility that is, wholly or partly, physically located within a  
24 public right-of-way and that is used to provide video programming,  
25 cable, voice, or data services.

26           (5) "Franchise" means an initial authorization, or  
27 renewal of an authorization, issued by a franchising authority,

1 regardless of whether the authorization is designated as a  
2 franchise, permit, license, resolution, contract, certificate,  
3 agreement, or otherwise, that authorizes the construction and  
4 operation of a cable or video services network in the public  
5 rights-of-way.

6 (6)(A) "Gross revenues" means all consideration of any  
7 kind or nature including without limitation cash, credits,  
8 property, and in-kind contributions (services or goods) derived by  
9 the holder of a state-issued certificate of franchise authority  
10 from the operation of the cable service provider's or the video  
11 service provider's network to provide cable service or video  
12 service within the municipality. Gross revenue shall include all  
13 consideration paid to the holder of a state-issued certificate of  
14 franchise authority and its affiliates (to the extent either is  
15 acting as a provider of a cable service or video service as  
16 authorized by this chapter), which shall include but not be limited  
17 to the following: (i) all fees charged to subscribers for any and  
18 all cable service or video service provided by the holder of a  
19 state-issued certificate of franchise authority; (ii) any fee  
20 imposed on the holder of a state-issued certificate of franchise  
21 authority by this chapter that is passed through and paid by  
22 subscribers (including without limitation the franchise fee set  
23 forth in this chapter); and (iii) compensation received by the  
24 holder of a state-issued certificate of franchise authority or its  
25 affiliates that is derived from the operation of the holder of a  
26 state-issued certificate of franchise authority's network to  
27 provide cable service or video service with respect to commissions

1 that are paid to the holder of a state-issued certificate of  
2 franchise authority as compensation for promotion or exhibition of  
3 any products or services on the holder of a state-issued  
4 certificate of franchise authority's network, such as a "home  
5 shopping" or a similar channel, subject to Paragraph (B)(v). Gross  
6 revenue includes a pro rata portion of all revenue derived by the  
7 holder of a state-issued certificate of franchise authority or its  
8 affiliates pursuant to compensation arrangements for advertising  
9 derived from the operation of the holder of a state-issued  
10 certificate of franchise authority's network to provide cable  
11 service or the video service within a municipality, subject to  
12 Paragraph (B)(iii). The allocation shall be based on the number of  
13 subscribers in the municipality divided by the total number of  
14 subscribers in relation to the relevant regional or national  
15 compensation arrangement. Advertising commissions paid to third  
16 parties shall not be netted against advertising revenue included in  
17 gross revenue. Revenue of an affiliate derived from the  
18 affiliate's provision of cable service or the video service shall  
19 be gross revenue to the extent the treatment of such revenue as  
20 revenue of the affiliate and not of the holder of a state-issued  
21 certificate of franchise authority has the effect (whether  
22 intentional or unintentional) of evading the payment of fees which  
23 would otherwise be paid to the municipality. In no event shall  
24 revenue of an affiliate be gross revenue to the holder of a  
25 state-issued certificate of franchise authority if such revenue is  
26 otherwise subject to fees to be paid to the municipality.

27 (B) For purposes of this section, "gross

1 revenues" does not include:

2 (i) any revenue not actually received, even  
3 if billed, such as bad debt;

4 (ii) non-cable services or non-video  
5 services revenues received by any affiliate or any other person in  
6 exchange for supplying goods or services used by the holder of a  
7 state-issued certificate of franchise authority to provide cable  
8 service or video service;

9 (iii) refunds, rebates, or discounts made  
10 to subscribers, leased access providers, advertisers, or a  
11 municipality;

12 (iv) any revenues from services classified  
13 as non-cable service or non-video service under federal law  
14 including without limitation revenue received from  
15 telecommunications services; revenue received from information  
16 services (but not excluding cable services or video services); and  
17 any other revenues attributed by the holder of a state-issued  
18 certificate of franchise authority to non-cable service or  
19 non-video service in accordance with Federal Communications  
20 Commission or commission rules, regulations, standards, or orders;

21 (v) any revenue paid by subscribers to home  
22 shopping programmers directly from the sale of merchandise through  
23 any home shopping channel offered as part of the cable services or  
24 video services, but not excluding any commissions that are paid to  
25 the holder of a state-issued certificate of franchise authority as  
26 compensation for promotion or exhibition of any products or  
27 services on the holder of a state-issued certificate of franchise



1 authority's network, such as a "home shopping" or a similar  
2 channel;

3 (vi) the sale of cable services or video  
4 services for resale in which the purchaser is required to collect  
5 this chapter's fees from the purchaser's customer. Nothing under  
6 this chapter is intended to limit state's rights pursuant to 47  
7 U.S.C. Section 542(h);

8 (vii) the provision of cable services or  
9 video services to customers at no charge, as required or allowed by  
10 this chapter, including without limitation the provision of cable  
11 services or video services to public institutions, as required or  
12 permitted in this chapter, including without limitation public  
13 schools or governmental entities, as required or permitted in this  
14 chapter;

15 (viii) any tax of general applicability  
16 imposed upon the holder of a state-issued certificate of franchise  
17 authority or upon subscribers by a city, state, federal, or any  
18 other governmental entity and required to be collected by the  
19 holder of a state-issued certificate of franchise authority and  
20 remitted to the taxing entity (including, but not limited to, sales  
21 and use tax, gross receipts tax, excise tax, utility users tax,  
22 public service tax, communication taxes, and fees not imposed by  
23 this chapter);

24 (ix) any forgone revenue from the holder of  
25 a state-issued certificate of franchise authority's provision of  
26 free or reduced cost cable services or video services to any person  
27 including without limitation employees of the holder of a

1 state-issued certificate of franchise authority, to the  
2 municipality and other public institutions or other institutions as  
3 allowed in this chapter; provided, however, that any forgone  
4 revenue which the holder of a state-issued certificate of franchise  
5 authority chooses not to receive in exchange for trades, barters,  
6 services, or other items of value shall be included in gross  
7 revenue;

8 (x) sales of capital assets or sales of  
9 surplus equipment that is not used by the purchaser to receive cable  
10 services or video services from the holder of a state-issued  
11 certificate of franchise authority;

12 (xi) directory or Internet advertising  
13 revenue including, but not limited to, yellow pages, white pages,  
14 banner advertisement, and electronic publishing; and

15 (xii) reimbursement by programmers of  
16 marketing costs incurred by the holder of a state-issued franchise  
17 for the introduction of new programming that exceed the actual  
18 costs.

19 (C) For purposes of this definition, a provider's  
20 network consists solely of the optical spectrum wavelengths,  
21 bandwidth, or other current or future technological capacity used  
22 for the transmission of video programming over wireline directly to  
23 subscribers within the geographic area within the municipality as  
24 designated by the provider in its franchise.

25 (7) "Incumbent cable service provider" means the cable  
26 service provider serving the largest number of cable subscribers in  
27 a particular municipal franchise area on September 1, 2005.

1           (8) "Public right-of-way" means the area on, below, or  
2 above a public roadway, highway, street, public sidewalk, alley,  
3 waterway, or utility easement in which a municipality has an  
4 interest.

5           (9) "Video programming" means programming provided  
6 by, or generally considered comparable to programming provided by,  
7 a television broadcast station, as set forth in 47 U.S.C. Section  
8 522(20).

9           (10) "Video service" means video programming services  
10 provided through wireline facilities located at least in part in  
11 the public right-of-way without regard to delivery technology,  
12 including Internet protocol technology. This definition does not  
13 include any video service provided by a commercial mobile service  
14 provider as defined in 47 U.S.C. Section 332(d).

15           (11) "Video service provider" means a video  
16 programming distributor that distributes video programming  
17 services through wireline facilities located at least in part in  
18 the public right-of-way without regard to delivery technology.  
19 This term does not include a cable service provider.

20           Sec. 66.003. STATE AUTHORIZATION TO PROVIDE CABLE SERVICE  
21 OR VIDEO SERVICE. (a) An entity or person seeking to provide cable  
22 service or video service in this state after September 1, 2005,  
23 shall file an application for a state-issued certificate of  
24 franchise authority with the commission as required by this  
25 section. An entity providing cable service or video service under a  
26 franchise agreement with a municipality is not subject to this  
27 subsection with respect to such municipality until the franchise

1 agreement expires, except as provided by Section 66.004.

2 (a-1) The commission shall notify an applicant for a  
3 state-issued certificate of franchise authority whether the  
4 applicant's affidavit described by Subsection (b) is complete  
5 before the 15th business day after the applicant submits the  
6 affidavit.

7 (b) The commission shall issue a certificate of franchise  
8 authority to offer cable service or video service before the 17th  
9 business day after receipt of a completed affidavit submitted by  
10 the applicant and signed by an officer or general partner of the  
11 applicant affirming:

12 (1) that the applicant has filed or will timely file  
13 with the Federal Communications Commission all forms required by  
14 that agency in advance of offering cable service or video service in  
15 this state;

16 (2) that the applicant agrees to comply with all  
17 applicable federal and state statutes and regulations;

18 (3) that the applicant agrees to comply with all  
19 applicable municipal regulations regarding the use and occupation  
20 of public rights-of-way in the delivery of the cable service or  
21 video service, including the police powers of the municipalities in  
22 which the service is delivered;

23 (4) a description of the service area footprint to be  
24 served within the municipality, if applicable, otherwise the  
25 municipality to be served by the applicant, which may include  
26 certain designations of unincorporated areas, which description  
27 shall be updated by the applicant prior to the expansion of cable

1 service or video service to a previously undesignated service area  
2 and, upon such expansion, notice to the commission of the service  
3 area to be served by the applicant; and

4 (5) the location of the applicant's principal place of  
5 business and the names of the applicant's principal executive  
6 officers.

7 (c) The certificate of franchise authority issued by the  
8 commission shall contain:

9 (1) a grant of authority to provide cable service or  
10 video service as requested in the application;

11 (2) a grant of authority to use and occupy the public  
12 rights-of-way in the delivery of that service, subject to the laws  
13 of this state, including the police powers of the municipalities in  
14 which the service is delivered; and

15 (3) a statement that the grant of authority is subject  
16 to lawful operation of the cable service or video service by the  
17 applicant or its successor in interest.

18 (d) The certificate of franchise authority issued by the  
19 commission is fully transferable to any successor in interest to  
20 the applicant to which it is initially granted. A notice of  
21 transfer shall be filed with the commission and the relevant  
22 municipality within 14 business days of the completion of such  
23 transfer.

24 (e) The certificate of franchise authority issued by the  
25 commission may be terminated by the cable service provider or video  
26 service provider by submitting notice to the commission.

27 Sec. 66.004. ELIGIBILITY FOR COMMISSION-ISSUED FRANCHISE.

1 (a) A cable service provider or a video service provider that  
2 currently has or had previously received a franchise to provide  
3 cable service or video service with respect to such municipalities  
4 is not eligible to seek a state-issued certificate of franchise  
5 authority under this chapter as to those municipalities until the  
6 expiration date of the existing franchise agreement, except as  
7 provided by Subsections (b) and (c).

8 (b) Beginning September 1, 2005, a cable service provider or  
9 video service provider that is not the incumbent cable service  
10 provider and serves fewer than 40 percent of the total cable  
11 customers in a particular municipal franchise area may elect to  
12 terminate that municipal franchise and seek a state-issued  
13 certificate of franchise authority by providing written notice to  
14 the commission and the affected municipality before January 1,  
15 2006. The municipal franchise is terminated on the date the  
16 commission issues the state-issued certificate of franchise  
17 authority.

18 (c) A cable service provider that serves fewer than 40  
19 percent of the total cable customers in a municipal franchise area  
20 and that elects under Subsection (b) to terminate an existing  
21 municipal franchise is responsible for remitting to the affected  
22 municipality before the 91st day after the date the municipal  
23 franchise is terminated any accrued but unpaid franchise fees due  
24 under the terminated franchise. If the cable service provider has  
25 credit remaining from prepaid franchise fees, the provider may  
26 deduct the amount of the remaining credit from any future fees or  
27 taxes it must pay to the municipality, either directly or through

1 the comptroller.

2 (d) For purposes of this section, a cable service provider  
3 or video service provider will be deemed to have or have had a  
4 franchise to provide cable service or video service in a specific  
5 municipality if any affiliates or successor entity of the cable or  
6 video provider has or had a franchise agreement granted by that  
7 specific municipality.

8 (e) The terms "affiliates or successor entity" in this  
9 section shall include but not be limited to any entity receiving,  
10 obtaining, or operating under a municipal cable or video franchise  
11 through merger, sale, assignment, restructuring, or any other type  
12 of transaction.

13 (f) Except as provided in this chapter, nothing in this  
14 chapter is intended to abrogate, nullify, or adversely affect in  
15 any way the contractual rights, duties, and obligations existing  
16 and incurred by a cable service provider or a video service provider  
17 before the enactment of this chapter, and owed or owing to any  
18 private person, firm, partnership, corporation, or other entity  
19 including without limitation those obligations measured by and  
20 related to the gross revenue hereafter received by the holder of a  
21 state-issued certificate of franchise authority for services  
22 provided in the geographic area to which such prior franchise or  
23 permit applies. All liens, security interests, royalties, and  
24 other contracts, rights, and interests in effect on September 1,  
25 2005, shall continue in full force and effect, without the  
26 necessity for renewal, extension, or continuance, and shall be paid  
27 and performed by the holder of a state-issued certificate of

1 franchise authority, and shall apply as though the revenue  
2 generated by the holder of a state-issued certificate of franchise  
3 authority continued to be generated pursuant to the permit or  
4 franchise issued by the prior local franchising authority or  
5 municipality within the geographic area to which the prior permit  
6 or franchise applies. It shall be a condition to the issuance and  
7 continuance of a state-issued certificate of franchise authority  
8 that the private contractual rights and obligations herein  
9 described continue to be honored, paid, or performed to the same  
10 extent as though the cable service provider continued to operate  
11 under its prior franchise or permit, for the duration of such  
12 state-issued certificate of franchise authority and any renewals or  
13 extensions thereof, and that the applicant so agrees. Any person,  
14 firm, partnership, corporation, or other entity holding or claiming  
15 rights herein reserved may enforce same by an action brought in a  
16 court of competent jurisdiction.

17 Sec. 66.005. FRANCHISE FEE. (a) The holder of a  
18 state-issued certificate of franchise authority shall pay each  
19 municipality in which it provides cable service or video service a  
20 franchise fee of five percent based upon the definition of gross  
21 revenues as set forth in this chapter. That same franchise fee  
22 structure shall apply to any unincorporated areas that are annexed  
23 by a municipality after the effective date of the state-issued  
24 certificate of franchise authority.

25 (b) The franchise fee payable under this section is to be  
26 paid quarterly, within 45 days after the end of the quarter for the  
27 preceding calendar quarter. Each payment shall be accompanied by a



1 summary explaining the basis for the calculation of the fee. A  
2 municipality may review the business records of the cable service  
3 provider or video service provider to the extent necessary to  
4 ensure compensation in accordance with Subsection (a). Each party  
5 shall bear the party's own costs of the examination. A municipality  
6 may, in the event of a dispute concerning compensation under this  
7 section, bring an action in a court of competent jurisdiction.

8 (c) The holder of a state-issued certificate of franchise  
9 authority may recover from the provider's customers any fee imposed  
10 by this chapter.

11 Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY.

12 (a) Until the expiration of the incumbent cable service provider's  
13 agreement, the holder of a state-issued certificate of franchise  
14 authority shall pay a municipality in which it is offering cable  
15 service or video service the same cash payments on a per subscriber  
16 basis as required by the incumbent cable service provider's  
17 franchise agreement. All cable service providers and all video  
18 service providers shall report quarterly to the municipality the  
19 total number of subscribers served within the municipality. The  
20 amount paid by the holder of a state-issued certificate of  
21 franchise authority shall be calculated quarterly by the  
22 municipality by multiplying the amount of cash payment under the  
23 incumbent cable service provider's franchise agreement by a number  
24 derived by dividing the number of subscribers served by a video  
25 service provider or cable service provider by the total number of  
26 video or cable service subscribers in the municipality. Such pro  
27 rata payments are to be paid quarterly to the municipality within 45

1 days after the end of the quarter for the preceding calendar  
2 quarter.

3 (b) On the expiration of the incumbent cable service  
4 provider's agreement, the holder of a state-issued certificate of  
5 franchise authority shall pay a municipality in which it is  
6 offering cable service or video service one percent of the  
7 provider's gross revenues, as defined by this chapter, or at the  
8 municipality's election, the per subscriber fee that was paid to  
9 the municipality under the expired incumbent cable service  
10 provider's agreement, in lieu of in-kind compensation and grants.  
11 Payments under this subsection shall be paid in the same manner as  
12 outlined in Section 66.005(b).

13 (c) All fees paid to municipalities under this section are  
14 paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and  
15 may be used by the municipality as allowed by federal law; further,  
16 these payments are not chargeable as a credit against the franchise  
17 fee payments authorized under this chapter.

18 (d) The following services shall continue to be provided by  
19 the cable provider that was furnishing services pursuant to its  
20 municipal cable franchise until January 1, 2008, or until the term  
21 of the franchise was to expire, whichever is later, and thereafter  
22 as provided in Subdivisions (1) and (2) below:

23 (1) institutional network capacity, however defined  
24 or referred to in the municipal cable franchise but generally  
25 referring to a private line data network capacity for use by the  
26 municipality for noncommercial purposes, shall continue to be  
27 provided at the same capacity as was provided to the municipality

1 prior to the date of the termination, provided that the  
2 municipality will compensate the provider for the actual  
3 incremental cost of the capacity; and

4 (2) cable services to community public buildings, such  
5 as municipal buildings and public schools, shall continue to be  
6 provided to the same extent provided immediately prior to the date  
7 of the termination. Beginning on January 1, 2008, or the  
8 expiration of the franchise agreement, whichever is later, a  
9 provider that provides the services may deduct from the franchise  
10 fee to be paid to the municipality an amount equal to the actual  
11 incremental cost of the services if the municipality requires the  
12 services after that date. Such cable service generally refers to  
13 the existing cable drop connections to such facilities and the tier  
14 of cable service provided pursuant to the franchise at the time of  
15 the termination.

16 Sec. 66.007. BUILD-OUT. The holder of a state-issued  
17 certificate of franchise authority shall not be required to comply  
18 with mandatory build-out provisions.

19 Sec. 66.008. CUSTOMER SERVICE STANDARDS. The holder of a  
20 state-issued certificate of franchise authority shall comply with  
21 customer service requirements consistent with 47 C.F.R. Section  
22 76.309(c) until there are two or more providers offering service,  
23 excluding direct-to-home satellite service, in the relevant  
24 municipality.

25 Sec. 66.009. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS  
26 CHANNELS. (a) Not later than 120 days after a request by a  
27 municipality, the holder of a state-issued certificate of franchise

1 authority shall provide the municipality with capacity in its  
2 communications network to allow public, educational, and  
3 governmental (PEG) access channels for noncommercial programming.

4 (b) The holder of a state-issued certificate of franchise  
5 authority shall provide no fewer than the number of PEG access  
6 channels a municipality has activated under the incumbent cable  
7 service provider's franchise agreement as of September 1, 2005.

8 (c) If a municipality did not have PEG access channels as of  
9 September 1, 2005, the cable service provider or video service  
10 provider shall furnish:

11 (1) up to three PEG channels for a municipality with a  
12 population of at least 50,000; and

13 (2) up to two PEG channels for a municipality with a  
14 population of less than 50,000.

15 (d) Any PEG channel provided pursuant to this section that  
16 is not utilized by the municipality for at least eight hours a day  
17 shall no longer be made available to the municipality, but may be  
18 programmed at the cable service provider's or video service  
19 provider's discretion. At such time as the municipality can  
20 certify to the cable service provider or video service provider a  
21 schedule for at least eight hours of daily programming, the cable  
22 service provider or video service provider shall restore the  
23 previously lost channel but shall be under no obligation to carry  
24 that channel on a basic or analog tier.

25 (e) In the event a municipality has not utilized the minimum  
26 number of access channels as permitted by Subsection (c), access to  
27 the additional channel capacity allowed in Subsection (c) shall be

1 provided upon 90 days' written notice if the municipality meets the  
2 following standard: if a municipality has one active PEG channel  
3 and wishes to activate an additional PEG channel, the initial  
4 channel shall be considered to be substantially utilized when 12  
5 hours are programmed on that channel each calendar day. In  
6 addition, at least 40 percent of the 12 hours of programming for  
7 each business day on average over each calendar quarter must be  
8 nonrepeat programming. Nonrepeat programming shall include the  
9 first three video-castings of a program. If a municipality is  
10 entitled to three PEG channels under Subsection (c) and has in  
11 service two active PEG channels, each of the two active channels  
12 shall be considered to be substantially utilized when 12 hours are  
13 programmed on each channel each calendar day and at least 50 percent  
14 of the 12 hours of programming for each business day on average over  
15 each calendar quarter is nonrepeat programming for three  
16 consecutive calendar quarters.

17 (f) The operation of any PEG access channel provided  
18 pursuant to this section shall be the responsibility of the  
19 municipality receiving the benefit of such channel, and the holder  
20 of a state-issued certificate of franchise authority bears only the  
21 responsibility for the transmission of such channel. The holder of  
22 a state-issued certificate of franchise authority shall be  
23 responsible for providing the connectivity to each PEG access  
24 channel distribution point up to the first 200 feet.

25 (g) The municipality must ensure that all transmissions,  
26 content, or programming to be transmitted over a channel or  
27 facility by a holder of a state-issued certificate of franchise

1 authority are provided or submitted to the cable service provider  
2 or video service provider in a manner or form that is capable of  
3 being accepted and transmitted by a provider, without requirement  
4 for additional alteration or change in the content by the provider,  
5 over the particular network of the cable service provider or video  
6 service provider, which is compatible with the technology or  
7 protocol utilized by the cable service provider or video service  
8 provider to deliver services.

9 (h) Where technically feasible, the holder of a  
10 state-issued certificate of franchise authority and an incumbent  
11 cable service provider shall use reasonable efforts to interconnect  
12 their cable or video systems for the purpose of providing PEG  
13 programming. Interconnection may be accomplished by direct cable,  
14 microwave link, satellite, or other reasonable method of  
15 connection. Holders of a state-issued certificate of franchise  
16 authority and incumbent cable service providers shall negotiate in  
17 good faith and incumbent cable service providers may not withhold  
18 interconnection of PEG channels.

19 (i) A court of competent jurisdiction shall have exclusive  
20 jurisdiction to enforce any requirement under this section.

21 Sec. 66.010. NONDISCRIMINATION BY MUNICIPALITY. (a) A  
22 municipality shall allow the holder of a state-issued certificate  
23 of franchise authority to install, construct, and maintain a  
24 communications network within a public right-of-way and shall  
25 provide the holder of a state-issued certificate of franchise  
26 authority with open, comparable, nondiscriminatory, and  
27 competitively neutral access to the public right-of-way. All use

1 of a public right-of-way by the holder of a state-issued  
2 certificate of franchise authority is nonexclusive and subject to  
3 Section 66.011.

4 (b) A municipality may not discriminate against the holder  
5 of a state-issued certificate of franchise authority regarding:

6 (1) the authorization or placement of a communications  
7 network in a public right-of-way;

8 (2) access to a building; or

9 (3) a municipal utility pole attachment term.

10 Sec. 66.011. MUNICIPAL POLICE POWER; OTHER AUTHORITY.

11 (a) A municipality may enforce police power-based regulations in  
12 the management of a public right-of-way that apply to the holder of  
13 a state-issued certificate of franchise authority within the  
14 municipality. A municipality may enforce police power-based  
15 regulations in the management of the activities of the holder of a  
16 state-issued certificate of franchise authority to the extent that  
17 they are reasonably necessary to protect the health, safety, and  
18 welfare of the public. Police power-based regulation of the holder  
19 of a state-issued certificate of franchise authority's use of the  
20 public right-of-way must be competitively neutral and may not be  
21 unreasonable or discriminatory. A municipality may not impose on  
22 activities of the holder of a state-issued certificate of franchise  
23 authority a requirement:

24 (1) that particular business offices be located in the  
25 municipality;

26 (2) regarding the filing of reports and documents with  
27 the municipality that are not required by state or federal law and

1 that are not related to the use of the public right-of-way except  
2 that a municipality may request maps and records maintained in the  
3 ordinary course of business for purposes of locating the portions  
4 of a communications network that occupy public rights-of-way. Any  
5 maps or records of the location of a communications network  
6 received by a municipality shall be confidential and exempt from  
7 disclosure under Chapter 552, Government Code, and may be used by a  
8 municipality only for the purpose of planning and managing  
9 construction activity in the public right-of-way. A municipality  
10 may not request information concerning the capacity or technical  
11 configuration of the holder of a state-issued certificate of  
12 franchise authority's facilities;

13 (3) for the inspection of the holder of a state-issued  
14 certificate of franchise authority's business records except to  
15 extent permitted under Section 66.005(b);

16 (4) for the approval of transfers of ownership or  
17 control of the holder of a state-issued certificate of franchise  
18 authority's business, except that a municipality may require that  
19 the holder of a state-issued certificate of franchise authority  
20 maintain a current point of contact and provide notice of a transfer  
21 within a reasonable time; or

22 (5) that the holder of a state-issued certificate of  
23 franchise authority that is self-insured under the provisions of  
24 state law obtain insurance or bonding for any activities within the  
25 municipality, except that a self-insured provider shall provide  
26 substantially the same defense and claims processing as an insured  
27 provider. A bond may not be required from a provider for any work



1 consisting of aerial construction except that a reasonable bond may  
2 be required of a provider that cannot demonstrate a record of at  
3 least four years' performance of work in any municipal public  
4 right-of-way free of currently unsatisfied claims by a municipality  
5 for damage to the right-of-way.

6 (b) Notwithstanding any other law, a municipality may  
7 require the issuance of a construction permit, without cost, to the  
8 holder of a state-issued certificate of franchise authority that is  
9 locating facilities in or on a public right-of-way in the  
10 municipality. The terms of the permit shall be consistent with  
11 construction permits issued to other persons excavating in a public  
12 right-of-way.

13 (c) In the exercise of its lawful regulatory authority, a  
14 municipality shall promptly process all valid and administratively  
15 complete applications of the holder of a state-issued certificate  
16 of franchise authority for a permit, license, or consent to  
17 excavate, set poles, locate lines, construct facilities, make  
18 repairs, affect traffic flow, or obtain zoning or subdivision  
19 regulation approvals or other similar approvals. A municipality  
20 shall make every reasonable effort not to delay or unduly burden the  
21 provider in the timely conduct of the provider's business.

22 (d) If there is an emergency necessitating response work or  
23 repair, the holder of a state-issued certificate of franchise  
24 authority may begin the repair or emergency response work or take  
25 any action required under the circumstances without prior approval  
26 from the affected municipality, if the holder of a state-issued  
27 certificate of franchise authority notifies the municipality as

1 promptly as possible after beginning the work and later obtains any  
2 approval required by a municipal ordinance applicable to emergency  
3 response work.

4 (e) The commission shall have no jurisdiction to review such  
5 police power-based regulations and ordinances adopted by a  
6 municipality to manage the public rights-of-way.

7 Sec. 66.012. INDEMNITY IN CONNECTION WITH RIGHT-OF-WAY;  
8 NOTICE OF LIABILITY. (a) The holder of a state-issued certificate  
9 of franchise authority shall indemnify and hold a municipality and  
10 its officers and employees harmless against any and all claims,  
11 lawsuits, judgments, costs, liens, losses, expenses, fees  
12 (including reasonable attorney's fees and costs of defense),  
13 proceedings, actions, demands, causes of action, liability, and  
14 suits of any kind and nature, including personal or bodily injury  
15 (including death), property damage, or other harm for which  
16 recovery of damages is sought, that is found by a court of competent  
17 jurisdiction to be caused solely by the negligent act, error, or  
18 omission of the holder of a state-issued certificate of franchise  
19 authority or any agent, officer, director, representative,  
20 employee, affiliate, or subcontractor of the holder of a  
21 state-issued certificate of franchise authority or their  
22 respective officers, agents, employees, directors, or  
23 representatives, while installing, repairing, or maintaining  
24 facilities in a public right-of-way. The indemnity provided by  
25 this subsection does not apply to any liability resulting from the  
26 negligence of the municipality or its officers, employees,  
27 contractors, or subcontractors. If the holder of a state-issued

1 certificate of franchise authority and the municipality are found  
2 jointly liable by a court of competent jurisdiction, liability  
3 shall be apportioned comparatively in accordance with the laws of  
4 this state without, however, waiving any governmental immunity  
5 available to the municipality under state law and without waiving  
6 any defenses of the parties under state law. This subsection is  
7 solely for the benefit of the municipality and the holder of a  
8 state-issued certificate of franchise authority and does not create  
9 or grant any rights, contractual or otherwise, for or to any other  
10 person or entity.

11 (b) The holder of a state-issued certificate of franchise  
12 authority and a municipality shall promptly advise the other in  
13 writing of any known claim or demand against the holder of a  
14 state-issued certificate of franchise authority or the  
15 municipality related to or arising out of the holder of a  
16 state-issued certificate of franchise authority's activities in a  
17 public right-of-way.

18 (c) The commission shall have no jurisdiction to review such  
19 police power-based regulations and ordinances adopted by a  
20 municipality to manage the public rights-of-way.

21 Sec. 66.013. MUNICIPAL AUTHORITY. In addition to a  
22 municipality's authority to exercise its nondiscriminatory police  
23 power with respect to public rights-of-way under current law, a  
24 municipality's authority to regulate the holder of state-issued  
25 certificate of franchise authority is limited to:

26 (1) a requirement that the holder of a state-issued  
27 certificate of franchise authority who is providing cable service

1 or video service within the municipality register with the  
2 municipality and maintain a point of contact;

3 (2) the establishment of reasonable guidelines  
4 regarding the use of public, educational, and governmental access  
5 channels; and

6 (3) submitting reports within 30 days on the customer  
7 service standards referenced in Section 66.008 if the provider is  
8 subject to those standards and has continued and unresolved  
9 customer service complaints indicating a clear failure on the part  
10 of the holder of a state-issued certificate of franchise authority  
11 to comply with the standards.

12 Sec. 66.014. DISCRIMINATION PROHIBITED. (a) The purpose  
13 of this section is to prevent discrimination among potential  
14 residential subscribers.

15 (b) A cable service provider or video service provider that  
16 has been granted a state-issued certificate of franchise authority  
17 may not deny access to service to any group of potential residential  
18 subscribers because of the income of the residents in the local area  
19 in which such group resides.

20 (c) An affected person may seek enforcement of the  
21 requirements described by Subsection (b) by initiating a proceeding  
22 with the commission. A municipality within which the potential  
23 residential cable service or video service subscribers referenced  
24 in Subsection (b) may be considered an affected person for purposes  
25 of this section.

26 (d) The holder of a state-issued certificate of franchise  
27 authority shall have a reasonable period of time to become capable

1 of providing cable service or video service to all households  
2 within the designated franchise area as defined in Section  
3 66.003(b)(4) and may satisfy the requirements of this section  
4 through the use of an alternative technology that provides  
5 comparable content, service, and functionality.

6 (e) Notwithstanding any provision of this chapter, the  
7 commission has the authority to make the determination regarding  
8 the comparability of the technology and the service provided.  
9 Notwithstanding any provision of this chapter, the commission has  
10 the authority to monitor the deployment of cable services, video  
11 services, or alternate technology.

12 Sec. 66.015. COMPLIANCE. (a) Should the holder of a  
13 state-issued certificate of franchise authority be found by a court  
14 of competent jurisdiction to be in noncompliance with the  
15 requirements of this chapter, the court shall order the holder a  
16 state-issued certificate of franchise authority, within a  
17 specified reasonable period of time, to cure such noncompliance.  
18 Failure to comply shall subject the holder of the state-issued  
19 franchise of franchise authority to penalties as the court shall  
20 reasonably impose, up to and including revocation of the  
21 state-issued certificate of franchise authority granted under this  
22 chapter.

23 (b) A municipality within which the provider offers cable  
24 service or video service shall be an appropriate party in any such  
25 litigation.

26 Sec. 66.016. APPLICABILITY OF OTHER LAWS. (a) Nothing in  
27 this chapter shall be interpreted to prevent a voice provider,

1 cable service provider or video service provider, or municipality  
2 from seeking clarification of its rights and obligations under  
3 federal law or to exercise any right or authority under federal or  
4 state law.

5 (b) Nothing in this chapter shall limit the ability of a  
6 municipality under existing law to receive compensation for use of  
7 the public rights-of-way from entities determined not to be subject  
8 to all or part of this chapter, including but not limited to  
9 provider of Internet protocol cable or video services, unless such  
10 payments are expressly prohibited by federal law.

11 Sec. 66.017. STUDY. (a) The telecommunications  
12 competitiveness legislative oversight committee shall conduct a  
13 joint interim study with the commission regarding the following:

14 (1) appropriate alternative forms of competitively  
15 neutral compensation methodology that should flow to  
16 municipalities from all sources related to the provision of  
17 information services, telecommunication services, cable services,  
18 and video services;

19 (2) right-of-way access and fees;

20 (3) the transition from local franchise authority to  
21 state-issued authority, including methods to maintain current  
22 municipal revenue streams, including franchise fees and in-kind  
23 contributions; continuation of public, educational, and  
24 governmental access channels; and build-out requirements; and

25 (4) other relevant issues.

26 (b) The committee shall report its findings to the  
27 lieutenant governor and speaker of the House of Representatives no

1 later than December 31, 2006.

2 (c) This section expires January 1, 2007.

3 SECTION 28. Section 283.002, Local Government Code, is  
4 amended by amending Subdivision (2) and adding Subdivision (7) to  
5 read as follows:

6 (2) "Certificated telecommunications provider" means  
7 a person who has been issued a certificate of convenience and  
8 necessity, certificate of operating authority, or service provider  
9 certificate of operating authority by the commission to offer local  
10 exchange telephone service or a person who provides voice service.

11 (7) "Voice service" means voice communications  
12 services provided through wireline facilities located at least in  
13 part in the public right-of-way, without regard to the delivery  
14 technology, including Internet protocol technology. The term does  
15 not include voice service provided by a commercial mobile service  
16 provider as defined by 47 U.S.C. Section 332(d).

17 SECTION 29. The following provisions of the Utilities Code  
18 are repealed:

19 (1) Subchapters B through F, Chapter 62; and

20 (2) Chapters 61 and 63.

21 SECTION 30. The Public Utility Commission of Texas shall  
22 conduct a study to determine whether Title 2, Utilities Code,  
23 adequately preserves customer choice in the Internet-enabled  
24 applications employed in association with broadband service and  
25 shall report its conclusions and recommendations to the legislature  
26 not later than January 1, 2007. The study must include  
27 consultation with and comment from all interested parties.

1           SECTION 31. If any provision of this Act or its application  
2 to any person or circumstance is held invalid, the invalidity does  
3 not affect other provisions or applications of this Act that can be  
4 given effect without the invalid provision or application, and to  
5 this end the provisions of this Act are declared to be severable.

6           SECTION 32. This Act takes effect September 1, 2005, if it  
7 receives a vote of two-thirds of all the members elected to each  
8 house, as provided by Section 39, Article III, Texas Constitution.  
9 If this Act does not receive the vote necessary for effect on that  
10 date, this Act takes effect on the 91st day after the last day of the  
11 legislative session.



\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 5 passed the Senate on August 9, 2005, by the following vote: Yeas 24, Nays 3, one present not voting.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 5 passed the House on August 10, 2005, by the following vote: Yeas 144, Nays 1, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor